

☐ AC-AMENDMENT OF CERTIFICATION.—Petitioner seeks amendment of certification issued in Case No. _____

Attach statement describing the specific amendment sought.

1. NAME OF EMPLOYER Hawkins County Natural Gas Utilities District EMPLOYER REPRESENTATIVE TO CONTACT Ernest P. West Jr. PHONE NO. _____
2. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State, and ZIP Code) 203 South Depot, Rogersville, Tennessee
4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.) Utility Maintenance 4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE Natural Gas

5. Unit involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)
Included All pipefitters employed at the Employer's, Rogersville, Tennessee operation

6a. NUMBER OF EMPLOYEES IN UNIT,
PRESENT 10

PROPOSED (BY UC/AC)

Excluded All other employees, office clerical employees, salesman, warehouseman, professional employees, guards and supervisors as defined in the Act.

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?
☒ YES ☐ NO
*Not applicable in R.M. ☐ AC

(If you have checked box BC in 1 above, check and complete EITHER item "a" or "b," whichever is applicable.)

7a. ☒ Request for recognition as Bargaining Representative was made on February 1, 1967 and Employer declined recognition on or about February 27, 1967. (If no reply received, so state)
(Month, day, year)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME _____ ADDRESS none AFFILIATION _____ DATE OF RECOGNITION OR CERTIFICATION _____

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year) _____ 10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES _____ NO X 11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF _____

(Insert name)

ORGANIZATION, OF _____

(Insert address)

SINCE _____

(Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11a) WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (If none, so state.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)
<u>NOTE</u>			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Plumbers and Steamfitters Local Union No. 102, Knoxville, Tennessee AFL-CIO

By James E. F. F. F. (Signature of representative or person filing petition)

Address 1216 Broadway N.E., Knoxville, Tenn. 37917 Business Agent Local No. 102, CIO
(Street and number, city, State, and ZIP Code)

522-7413
(Telephone number)

WHOLLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

OPD 894-283

3

(1/2)



BEFORE THE NATIONAL LABOR RELATIONS BOARD**Tenth Region****Case No. 10-RC-7070****In the Matter of:****THE NATURAL GAS UTILITY DISTRICT OF
HAWKINS COUNTY, TENNESSEE****—and—****UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF
THE UNITED STATES AND CANADA, AMERICAN FEDER-
ATION OF LABOR, LOCAL UNION No. 102****Chancery Courtroom
First Floor
Hawkins County Courthouse
Rogersville, Tennessee
Monday, June 19, 1967.**

The above-entitled matter came on for hearing, pursuant to notice, at 1:55 o'clock, p. m.

BEFORE:**GEORGE L. CARD, Hearing Officer.****APPEARANCES:****JAMES O. PHILLIPS, JR., ESQ., P. O. Box 144,
Rogersville, Tennessee, 37857, appearing for the
Employer.****ALLEN M. ELLIOTT, ESQ., 1408 Bank of Knoxville
Bldg., Knoxville, Tennessee, appearing for the
Petitioner.****PROCEEDINGS**

HEARING OFFICER CARD: This hearing will be in order. This is a formal hearing in the matter of

Hawkins County Natural Gas Utilities District, Case No. 10-RC-7070, before the National Labor Relations Board. The Hearing Officer appearing for the National Labor Relations Board is George L. Card. All parties have been informed of the procedure at formal hearing before the Board by service of a Statement of Standard Procedures with the notice of hearing. I have additional copies of this statement for distribution if any party wishes more.

* * * *

HEARING OFFICER: On the record. I now propose to receive the formal papers. They have been marked for identification as Board's Exhibits 1(a) through 1(d), inclusive. Exhibit 1(d) being an index and description of the formal documents. These papers have been shown to both parties. Are there any objections to their receipt in evidence?

(The documents above referred to were marked Board's Exhibit 1(a) through 1(d), for identification.)

MR. ELLIOTT: Not at all.

MR. PHILLIPS: No.

HEARING OFFICER: Hearing no objections, the formal papers are received.

(The documents above referred to heretofore marked Board's Exhibits 1(a) through 1(d), were received in evidence.)

HEARING OFFICER: At this time I would like to identify and receive a motion made by the Employer, which I shall now read into the record:

"In Re: Plumbers and Steamfitters Local No. 102, Knoxville, Tennessee, AFL-CIO, Petitioner and Hawkins County Natural Gas Utilities, Employer Before the Hearing Officer for National Labor Relations Board: MOTION Comes the Employer and moves to dismiss the petition filed herein, upon the following grounds:

(1) The correct name of the employer is "The Natural Gas Utility District of Hawkins County, Tennessee,"

and the employer is not correctly named in the petition or in the orders pursuant thereto.

(2) The employer is a political subdivision of the State of Tennessee and/or Hawkins County, Tennessee, having been created pursuant to the terms and provisions of the Tennessee Utility District Act of 1937. As such, its employees are "public employees" and it is exempt from the terms and provisions of the National Labor Relations Act." Signed: "The Natural Gas Utility District of Hawkins County, Tennessee. By: J. O. Phillips, Jr., Attorney"

Does either party wish to make a statement on that motion?

MR. ELLIOTT: Mr. Hearing Officer, I would like to amend our petition to show the correct name, "The Natural Gas Utility District of Hawkins County, Tennessee."

HEARING OFFICER: Any objections to the amendment?

MR. PHILLIPS: None.

HEARING OFFICER: At this time I will grant the motion to amend the petition to show the correct name of the Employer.

MR. ELLIOTT: Thank you. And we join in issue on the second grounds of the motion.

HEARING OFFICER: All right. Have you anything at this time, or will you save this for the close?

MR. PHILLIPS: We will wait until the close.

HEARING OFFICER: At this time, gentlemen, pursuant to the Rules and Regulations of the Board, I will refer this motion to dismiss to the Board for proper consideration. Are there any further motions to be made at this time?

MR. PHILLIPS: No, sir.

MR. ELLIOTT: None.

* * * *

HEARING OFFICER: On the record. The Hearing Officer proposes the following stipulation: The Petitioner, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of

Labor, Local Union No. 102, is a labor organization within the meaning of Section 2(5) of the Act.

Will the Petitioner so stipulate?

MR. ELLIOTT: Yes.

HEARING OFFICER: Will the Employer?

MR. PHILLIPS: Yes.

HEARING OFFICER: The Hearing Officer proposes the following stipulation: That on or about February the 1st, 1967, the Petitioner requested recognition as the bargaining representative for the employees in the unit described in the amended petition; that the Employer has and is declining to grant such recognition.

Will the Employer so stipulate?

MR. PHILLIPS: Yes.

HEARING OFFICER: Will the Petitioner so stipulate?

MR. ELLIOTT: Yes.

HEARING OFFICER: My file shows that there has been no history of collective bargaining involving the Employer and the employees within the unit requested. Is this true?

MR. PHILLIPS: That is correct.

HEARING OFFICER: Do you agree with that?

MR. ELLIOTT: As far as we know.

HEARING OFFICER: The stipulations are received.

* * *

ERNEST P. WEST, JR.

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * *

Q (By Mr. Phillips) Mr. West, you have been manager of the Natural Gas Utility District of Hawkins County, Tennessee since what date?

A March 15th, 1967.

* * *

Q How many employees are there in the Utility District; total employees?

A Total employees number thirteen in both offices of the district.

Q And you are the manager; you included yourself within the thirteen?

A Yes, sir.

Q Do you recall how many employees there were at the time you took over the management of the district?

A There were fourteen.

Q All right, sir. Of the thirteen present employees, how many of them do and perform work which ordinarily would be referred to as pipe fitting work, steam-fitting work?

A There are six employees in the Rogersville office who are at various times assigned jobs which include pipe fitting as a portion of the duties.

Q You say in the Rogersville office. Does the Utility District also maintain an office in Church Hill within Hawkins County?

A Yes, it does.

Q Did you include the employees there in the total that you have already given us?

A Yes; the thirteen includes the Church Hill office.

Q Do any of the employees at the Church Hill office do steamfitting or pipe fitting work?

A When the job requires it, yes.

Q How many?

A Two.

Q So if you have a total at the present time including the Church Hill office of how many employees that do steamfitting work?

A Eight.

* * *

HEARING OFFICER: Could I ask you then, the five other employees that we talked about as being administrative, sales, they would not be in dispute in this matter, are they?

MR. PHILLIPS: I don't think so. There is a discrepancy, apparently, of two men, between the number named in the petition and the number we say would be involved.

HEARING OFFICER: These other five, you would not seek to include them within any unit?

MR. PHILLIPS: No.

HEARING OFFICER: All right. Mr. Elliott, I just asked Mr. Phillips are these other five that he identified as being administrative and sales employees, you do not seek to represent?

MR. ELLIOTT: We do not want those.

HEARING OFFICER: As to the eight other employees, including the two at Church Hill, do you seek to represent the employees both at Rogersville and Church Hill?

MR. ELLIOTT: Yes.

HEARING OFFICER: I note that your petition calls at the Rogersville, Tennessee operation.

MR. ELLIOTT: We don't know about the Rogersville plant—Church Hill—

HEARING OFFICER: —But you do seek them?

MR. ELLIOTT: Yes, we do seek to represent them.

HEARING OFFICER: Those eight people whose duties he has detailed.

MR. ELLIOTT: Yes.

HEARING OFFICER: Have you any questions of the witness concerning these people?

MR. ELLIOTT: We have only requested to represent what we consider ten employees of this District, regardless of where they might be working, as long as they are working employees of this Utility District.

HEARING OFFICER: All right. These eight that he enumerated as doing some pipe fitting, you all seek to represent?

MR. ELLIOTT: Yes.

HEARING OFFICER: All right. Mr. Phillips, have you anything further of this witness?

MR. PHILLIPS: I believe not.

HEARING OFFICER: Well, I have a few questions here.

Q (By The Hearing Officer) Mr. West, could you give me basically the description of the type of work at your—at the Employer's—that the Employer is engaged in?

A The Natural Gas Utility District of Hawkins County, Tennessee is engaged in the distribution and sale of natural gas.

Q And to whom do you sell this natural gas and distribute?

A To residential houses; commercial businesses; enterprises and industrial manufacturing firms.

Q In what geographical area do you make these sales?

A The eastern half of Hawkins County—we are allowed the entire county of Hawkins County—we have distribution facilities in the eastern portion only.

* * * *

Q Do you purchase goods from outside the State of Tennessee?

A We purchase appliances on occasions from suppliers outside the State of Tennessee, yes.

Q During the past twelve months, could you tell us what your annual purchases from outside the State of Tennessee were?

A No, sir, I don't know.

Q Were they above or below fifty thousand dollars?

A They were below fifty thousand dollars.

Q Could you tell us what in the past twelve months your annual gross volume of business was?

A Our gas sales for the fiscal year ending March 31st, 1967, was approximately three hundred and ninety thousand dollars.

Q You said "approximately," could you say directly that your gross volume of business exceeded two hundred fifty thousand dollars?

A Yes, sir.

Q Will you—you state that you buy some appliances from outside the State of Tennessee. From where do you buy this natural gas? Where does it come from?

A It is piped into the State of Tennessee by a transmission pipe line company and through their distributor in the State. We purchase the gas within the limits of the State of Tennessee.

Q You make your purchase from a distributor inside the State of Tennessee?

A Yes, sir.

Q And during the past twelve months, what would be the total price of gas which you purchased from this distributor?

A Approximately, a hundred ninety thousand or two hundred thousand dollars.

Q What is the name of this distributor?

A East Tennessee Natural Gas Company, Incorporated.

Q Will you state that East Tennessee Natural Gas Company, Incorporated, would—receives this gas from outside the State?

A Through their parent company, they do.

Q What is their parent company?

A Their parent company is Tennessee Gas Transmission Company.

Q Now, in your sales of products, you mentioned that you sell to homes, local businesses.

A Yes.

. . . .

Q Could you tell us, Mr. West, how the tax setup of the Utility District is?

A The District itself is tax exempt; both from State and local use taxes, sales taxes and federal taxes.

Q Is it a profit making organization?

A By definition and by the original legislative act or county court act, it is not a profit making organization.

Q What is the distribution of any profits made?

A The distribution of any profits would be to the County and the communities in which we distribute natural gas.

Q Are you aware, Mr. West, and can you tell us the procedures that go into creating a utility district, specifically, the Hawkins County Utility District?

A I have read the original charter and that's all. I am not aware of the procedures or any of the steps that were taken or are required to be taken.

Q How was this Utility District govern?

A Through its Board of Directors consisting of three people.

MR. PHILLIPS: Commissioners.

THE WITNESS: Excuse me. Board of Commissioners.

Q (By The Hearing Officer) Do you know how these commissioners get their jobs?

A I believe the original board was appointed by the Hawkins County Court.

Q This would be the—the Quarterly Court?

A Yes. I believe that's correct, is it not?

MR. PHILLIPS: The last part is not; appointed by the Chairman or County Judge.

HEARING OFFICER: County Judge, not by the court itself?

MR. PHILLIPS: No.

HEARING OFFICER: All right.

Q (By The Hearing Officer) You said the original ones were appointed this way. Is this a continuing process as the terms expire?

A No, sir. There are no set terms.

Q There are no set terms?

THE WITNESS: Are there?

MR. PHILLIPS: Yes.

THE WITNESS: I'll refer to Mr. Phillips then, please, for clarification or correction.

HEARING OFFICER: Maybe we can possibly get to that later. I just wanted to find out.

Q (By The Hearing Officer) You say you do not know the procedure about which a Utility District is setup?

A No, sir.

Q Who sets any rules or regulations concerning the operation of your business?

A The Board of Commissioners adopt any rules or regulations that would be necessary.

Q Who sets the fees that you charge for services?

A The Board of Commissioners.

Q Who does the hiring and firing of the employees?

A I do as the manager.

Q And you also establish labor relation policies for the company?

A This has not been completely clarified.

Q You are fairly new as manager?

A I have been here only three months.

Q Who determines the wages to be paid to their employees?

A This has been done in the past by the manager.

Q In the past by the manager. Are these employees considered to be the employees of Hawkins County, Tennessee?

A No, sir. They are not governed; they are not controlled by the County Government in anyway.

* * *

CROSS-EXAMINATION

Q (By Mr. Elliott) * * *

* * *

Q Are these employees—you do the hiring now, I take it?

A Yes.

Q And the firing?

A Yes.

Q These commissioners, of course, your boss, could control that if they wanted to?

A Yes.

Q But the County Court has nothing to do with the employees?

A No, sir.

Q The State has nothing to do with the employees?

A No.

Q This District is in absolute control of the three commissioners?

A Yes, sir.

Q Do they receive a salary?

A They receive a token salary, yes. It's—what is the proper terminology?

MR. PHILLIPS: Per Diem.

THE WITNESS: Per Diem.

MR. PHILLIPS: Being not to exceed \$25 a month.

Q (By Mr. Elliott) As far as you are concern, the Hawkins County in the State of Tennessee has nothing to do with your District?

A No, sir.

* * *

Q (By The Hearing Officer) You spoke of these commissioners of your District are appointed by the County Judge.

A Yes.

Q Of Hawkins County. How does the County Judge come about his office?

A By popular election, I believe.

THE WITNESS: Is that true, Mr. Phillips?

Q (By The Hearing Officer) To the best of your knowledge.

A To the best of my knowledge, yes.

* * *

DENNIE PAYNE

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Phillips) Mr.—you are Dennie Payne, County Court Clerk of Hawkins County, Tennessee?

A Yes, sir.

Q And, as such, you have the custody of the official records of Hawkins County?

A I do.

Q Mr. Payne, I hand you Quorum Record, Number 11, and specifically Page 347., which seems to be dated December 16th, 1957, a matter entitled, "In Re: The Natural Gas Utility District of Hawkins County, Tennessee," ask you if that is the original order creating the Hawkins County—The Natural Gas Utility District of Hawkins County, Tennessee?

A Yes, it is. I have the original here.

Q Yes, sir. I'll ask you if you will, from that record, prepare a certified copy and file it as an exhibit to your testimony?

A Yes.

Q I'll ask you, if as custodian of the official records of Hawkins County, also have the entire transcript of the proceedings whereby The Natural Gas Utility District of Hawkins County, Tennessee, was organized?

A Yes.

Q That includes the original petition.

A Yes.

Q For the creation of the Utility District, and the Order of it at that time, it was the Chairman of the Court.

A Yes.

Q I'll ask you, if you will, to prepare a certified copy of that entire transcript and file it as an exhibit to your testimony?

A Yes, sir.

MR. PHILLIPS: No further questions.

HEARING OFFICER: As County Court Clerk, are you familiar with the method in which the County Judge is, comes about his office?

THE WITNESS: Yes.

HEARING OFFICER: How is this done?

THE WITNESS: At this time, it was under the Chairman. He was elected by the members of the Court at this particular time.

HEARING OFFICER: At the time the petition was filed—

MR. PHILLIPS: —No, sir.

THE WITNESS: Sir.

MR. PHILLIPS: No—I'm sorry. You may have been talking about one petition, and I'm thinking about another one.

HEARING OFFICER: We are talking about the petition filed by the—creating the utility—

MR. PHILLIPS: —He's correct.

HEARING OFFICER: He was chosen by a vote of County Commissioners.

THE WITNESS: Yes.

HEARING OFFICER: How were the magistrates chosen?

THE WITNESS: They were elected by popular vote county wide.

HEARING OFFICER: All right. Are you familiar as County Court Clerk with the method in which a utility district is formed?

THE WITNESS: Well, I have had some since I have been in office.

HEARING OFFICER: Could you tell us to the best of your recollection and knowledge the procedures whereby a utility district is formed, in specifics, this one?

THE WITNESS: You have to have a petition first filed with the Court, with so many—I believe it's twenty-five signatures, I believe, or more required on it. I believe that's right.

HEARING OFFICER: These would be signatures of whom?

THE WITNESS: Of real estate property holders.

HEARING OFFICER: Within the county?

THE WITNESS: Yes.

HEARING OFFICER: All right.

THE WITNESS: Then there is a date set for the hearing before the Chairman, or the Judge it would be now—County Judge.

HEARING OFFICER: Is this in reality the same position of County Judge and Chairman of County Court?

THE WITNESS: Well, yes. It was set up as a special act in Hawkins County, but, I believe, they have a general bill that now supersedes that, I believe.

HEARING OFFICER: All right. Would you proceed then? The hearing has been set by the County Judge; what then happens?

THE WITNESS: Well, he decides—he hears the testimony of these witnesses who has petitioner for it, you know, they are represented by an attorney, and he decides whether it's needed or not.

HEARING OFFICER: If he determines that it is needed, what does he then do?

THE WITNESS: He signs the order.

HEARING OFFICER: An order such as you have just identified?

THE WITNESS: That's right; here it is.

HEARING OFFICER: Then what happens after that, he's filed an order? Who governs the utility district?

THE WITNESS: Appoints a committee—there is a committee appointed in here. I believe one is two; one is four; maybe—one is six, something, so many years. It's set out in the order.

HEARING OFFICER: Appointed by the County Judge?

THE WITNESS: Yes.

HEARING OFFICER: Or the Chairman of the County Court at this time?

THE WITNESS: There—they are requested in this order, I believe, in this petition, and if he approves it, why—

HEARING OFFICER: —The appointment is made?

THE WITNESS: By County Judge in the order.

HEARING OFFICER: If one of these commissioners should resign, or die, or cease to function as a commissioner, would a new commissioner be chosen?

THE WITNESS: Yes, they do, but I'm not too sure about that. I believe that the County Court—I believe the names is presented to the Court—County Court, and they approve it. I believe that's right. I'm not too sure about that.

HEARING OFFICER: The County Court being popularly elected?

THE WITNESS: That's right.

* * *

MR. PHILLIPS: The Employer now offers into evidence Section 6-2601—6-2627, inclusive, of the Tennessee Code Annotated, which is Chapter 26 of said Code, and is generally referred to as "The Utility District Act of 1937."

HEARING OFFICER: Any objections to the receipt of this document?

MR. ELLIOTT: No objections.

HEARING OFFICER: Then this document will be marked Employer's Exhibit 1, and will be received into evidence.

MR. PHILLIPS: Yes.

HEARING OFFICER: In an off-the-record discussion, the Employer requested permission to withdraw the original and make copies to submit to the court reporter. Are there any objections to that proceeding?

MR. ELLIOTT: No objections at all.

HEARING OFFICER: And the request to withdraw the original is granted, and copies can be made and provisions will be made with the court reporter for copies of this exhibit, and the exhibit is received.

(The document above referred to, to be marked Employer's Exhibit Number 1 and received in evidence.)

* * *

HEARING OFFICER: On the record. In an off-the-record discussion, the Employer wished to amend his offer of the exhibit, Employer's Exhibit 1, to include the amendment contained in the pocket supplement of the volume of the Tennessee Code Annotated. Is that a correct statement of what we are doing?

MR. PHILLIPS: That is correct.

MR. ELLIOTT: That is correct.

HEARING OFFICER: Is that agreeable with both parties?

MR. ELLIOTT: No objections.

HEARING OFFICER: All right. Then the Exhibit 1, as amended, is received.

* * *

MR. PHILLIPS: Employer desires to introduce a certified copy of the original petition to the County Court of Hawkins County, Tennessee, for the creation of the Natural Gas Utility District of Hawkins County, Tennessee, the same being properly identified and certified by the County Court Clerk.

(The document above referred to was marked Employer's Exhibit Number 2 for purposes of identification.)

HEARING OFFICER: Any objections?

MR. ELLIOTT: No objections.

HEARING OFFICER: Then that is received as Employer's Exhibit 2.

(The document above referred to was heretofore marked Employer's Exh. No. 2 and received in evidence.)

MR. PHILLIPS: The Employer now offers into evidence a certified copy of the Order of the County Court of Hawkins County, Tennessee, under date of December 16th, 1957, creating The Natural Gas Utility District of Hawkins County, Tennessee, and naming the commissioners of said district.

(The document above referred to was marked Employer's Exhibit Number 3 for purposes of identification.)

HEARING OFFICER: This earlier was also identified from the original by the County Court Clerk. Any objections?

MR. ELLIOTT: No objections.

HEARING OFFICER: Then that is received as Employer's Exhibit 3.

(The document above referred to heretofore marked Employer's Exhibit No. 3, was received in evidence.)

* * * *

MR. PHILLIPS: With respect to Exhibit Number 1, the Employer would like to specifically point out that Code Section 6-2607, with reference to Utility Districts reads as follows:

From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a municipality or public corporation in perpetuity under its corporate name, and the same shall in that name be a body politic incorporated with powers of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein shall not be construed as taxes. The powers of each District shall be vested in and exercised by a majority of the members of the Board of Commissioners of the District so long as the District continues to furnish any of the services which it is herein authorized to furnish. It shall be the sole public corporation empowered to furnish such services in the District unless and until it shall have been established that the public and convenience—that the public convenience and necessity requires of it other or additional services.

It is on the basis of this specific section and other sections making the utility district not subject to regulation of the utility commission as are ordinary utilities making it tax exempt; that the Employer contends that it is a municipality or public political subdivision and as such, not subject to the provision of the National Labor Relations Act.

* * *

MR. PHILLIPS: I believe Mr. West mentioned the fact that profits are distributed to the communities involved. I think the Act itself will perhaps show that, but I don't believe there is actually any distribution of profits, as such, contemplated by a utility district, but the communities would obtain the benefit of any efficiency from the operation in the reduced rates for the gas used by them.

* * *

MR. ELLIOTT: I would, if it's permissible, I'd like to have Mr. Phillips state how the financing was arranged; this million dollars as you stated off the record awhile ago.

HEARING OFFICER: If you are familiar with that, sir.

MR. PHILLIPS: Do you want me to take the witness stand?

Hearing Officer: I'll allow it as statement of counsel.

MR. PHILLIPS: The financing was arranged by private sale of bonds. Mr. Hugh G. Mark & Company of Birmingham, Alabama was the fiscal agent which handled the sale of the District bonds.

MR. ELLIOTT: Was there actually a million dollars sold, Mr. Phillips?

MR. PHILLIPS: I believe that is mighty close to the figure. It might have been nine hundred thousand; it might have been a million one hundred thousand dollars.

MR. ELLIOTT: Those were sold to anybody that agreed to pay for them?

MR. PHILLIPS: Yes.

* * *

EMPLOYER'S EXHIBIT No. 1

THE UTILITY DISTRICT LAW OF 1937
TITLE 6—MUNICIPAL CORPORATIONS.
CHAPTER 26—UTILITY DISTRICTS

Tennessee Code Annotated of 1955
Secs. 6-2601 - 6-2627, inclusive
Original Codification

CHAPTER 26
UTILITY DISTRICTS

SECTION.

- 6-2601. Short title.
- 6-2602. Petition for creation.
- 6-2603. Districts in two or more counties.
- 6-2604. Hearing and order of approval.
- 6-2605. Cost of establishment proceedings.
- 6-2606. Appeal to circuit court.
- 6-2607. District as municipality—Powers.
- 6-2608. Power to operate utilities.
- 6-2609. Subscribers' consent to new services.
- 6-2610. Powers in carrying out purposes.
- 6-2611. Eminent domain.
- 6-2612. General implementing powers.
- 6-2613. Exemption from state regulation.
- 6-2614. Terms of commissioners—Vacancies.

SECTION.

- 6-2615. Compensation of commissioners — Delegations of powers — Officers — Records — Qualifications.
- 6-2616. Powers of commissioners.
- 6-2617. Publication of annual statement.
- 6-2618. Protest of rates.
- 6-2619. Purposes for which bonds authorized.
- 6-2620. Terms of bonds.
- 6-2621. Covenants permissible in bonds.
- 6-2622. Bonds valid despite irregularities.
- 6-2623. Remedies of bondholders.
- 6-2624. Bonds payable from revenue.
- 6-2625. Rates sufficient to pay costs and retire bonds.
- 6-2626. Exemption from taxation.
- 6-2627. Chapter unaffected by other law.

6-2601. Short title.—This chapter shall be cited as "The Utility District Law of 1937." [Acts 1937, ch. 248, § 1; C. Supp. 1950, § 3695.26.]

Cited: Madison Suburban Utility Dist. v. Carson (1949), 191 Tenn. 300, 232 S. W. (2d) 277.

NOTES TO DECISIONS

1. *Constitutionality.*

The creation of a suburban water utility district did not result in the creation of a monopoly in violation of the Const., Art. 1, § 22, *First Suburban Water Utility Dist. v. McCanless* (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

(1950), 190 Tenn. 140, 228 S. W. (2d) 91.

3. *Private Act Creating District.*

Private Acts 1945, ch. 276, providing for a sanitary district for Fountain City did not violate Const., Art. 11, § 8 on the ground that it suspended the general law set forth in this chapter, as such private act created a public corporation with governmental powers over which legislature had absolute control. *Whedbee v. Godsey* (1950), 190 Tenn. 140, 228 S. W. (2d) 91.

2. *Application of Chapter.*

This chapter, which may apply to all sections of this state, is not exclusive, as sanitary conditions may vary as to different parts of the state. *Whedbee v. Godsey*

6-2602. *Petition for creation.*—A petition for the incorporation of a utility district may be submitted to the county judge or chairman of the county court of any county in which the proposed district is situated, said petition to be signed by not less than twenty-five (25) owners of real property, who shall also reside within the boundaries of the proposed district. Said petition shall include (a) a statement of the necessity for the service or services to be supplied by the proposed district; (b) the proposed corporate name and boundaries of the district; (c) an estimate of the cost of the acquisition or construction of the facilities of the district (which estimate shall not, however, serve as a limitation upon the financing of improvements, or extensions of the facilities), and (d) the nomination of three (3) residents of the district for appointment as commissioners of the district. The petition shall be signed in person by the petitioners with the addresses of their residences and shall be accompanied by a sworn statement of the person or persons circulating the petition, who shall state under oath that he or they witnessed the signature of each petitioner, that each signature is the signature of the person it purports to be, and that to the best of his or their knowledge each petitioner was, at the time of signing, an owner of real property within and a resident of the proposed district. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

6-2603. *Districts in two or more counties.*—Public utility districts embracing territory in two (2) or more counties may be created under the provisions of this chapter. In all such cases the petition for incorporation shall be submitted to the county judge or chairman of the county court of the county having the largest number of inhabitants according to the then last preceding United States census, and such county, judge or chairman shall have jurisdiction to proceed with such petition in like manner as if the territory involved were situated wholly within one (1) county; provided, however, that notice of the hearing on such petition shall be published in a newspaper of general circulation in each county embraced or partly embraced within such proposed district. Districts embracing territory in two (2) or more counties shall have and possess all of the powers conferred upon utility districts by this chapter as heretofore or hereafter amended. [Acts 1953, ch. 122, § 1.]

6-2604. *Hearing and order of approval.*—Upon receipt of such petition it shall be the duty of the county judge or chairman of the county court to fix a time and place for a public hearing upon the convenience and necessity of the incorporation of the district. The date of such hearing shall be not more than thirty (30) days after the receipt of the petition and its date, place and purpose shall be announced by the county judge or chairman of the county court in a notice published not more than fifteen (15) days nor less than seven (7) days prior to the date of the hearing in a newspaper of general circulation in the proposed district, or if there be no such newspaper, then by posting such notice in five (5) conspicuous public places within the boundaries of the proposed district. If at said public hearing the county judge or chairman of the county court finds (a) that the public convenience and necessity requires the creation of the district, and (b) that the creation of the district is economically sound and desirable, he shall enter an order of the court so finding, approving the creation of the district, designating it as "the _____

Utility District of _____
County, Tennessee," defining its territorial limits and

appointing as commissioners of the district those persons nominated in the petition, of whom one (1) shall be appointed for a term of two (2) years, one (1) for a terms of three (3) years, and one (1) for a term of four (4) years. Such order shall be filed with the clerk of the court and entered on record. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

NOTES TO DECISIONS

1. *Constitutionality.*

Clauses (a) and (b) of this section do not delegate such an unlimited discretion as to be an unconstitutional delegation of legis-

lative power to the county judge or chairman. *First Suburban Water Utility Dist. v. McCanless* (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

6-2605. *Cost of establishment proceedings.*—All costs incident to the publication and posting of notices, and to the public hearing and determination, and all court costs including the costs of filing and entering the said order, shall be borne by the parties filing the petition, and the county judge or chairman of the county court may, in his discretion, require the execution by the parties filing the petition of a cost bond in an amount and with good securities to guarantee the payment of such costs. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

6-2606. *Appeal to circuit court.*—Any party having an interest in the subject-matter and aggrieved or prejudiced by the finding and adjudication of the county judge or chairman of the county court, may pray and obtain an appeal therefrom to the circuit court of the county in the manner provided by law for appeals from the county court, upon the execution of appeal bond, as provided by law. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

6-2607. *District as municipality—Powers.*—From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a "municipality" or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect

taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commissioners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district unless and until it shall have been established that the public convenience and necessity requires other or additional services. [Acts 1937, ch. 248, § 3; C. Supp. 1950, § 3695.28.]

NOTES TO DECISIONS

1. *Nature of District.*

This section clearly classes and characterizes a utility district created under its provisions as an operation for a state, government-

al or public purpose and as a municipality or public corporation. First Suburban Water Utility Dist. v. McCanless (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

6-2608. *Power to operate utilities.*—Any district heretofore or hereafter created under authority of this chapter is empowered to conduct, operate, and maintain a system or systems for the furnishing of water, sewer, sewage disposal, natural gas, artificial gas, police, fire protection, garbage collection and garbage disposal, street lighting, parks and recreational facilities, or two or more of such systems, and to carry out such purpose it shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, within or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter; provided, that with respect to the conduct and operation of a police protection system nothing contained in this chapter shall be construed as meaning or intending any encroachment upon the police powers of the sheriff of any county in this state, but shall only empower the district to conduct and operate such police protection system when it is enabled to do so through legal arrangements with the sheriff of the county, and other constituted authorities,

NOTES TO DECISIONS

1. *Constitutionality.*

The creation of a suburban water utility district did not result in the creation of a monopoly in violation of the Const., Art. 1, § 22. *First Suburban Water Utility Dist. v. McCanless* (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

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6-2604. *Hearing and order of approval.*—Upon receipt of such petition it shall be the duty of the county judge or chairman of the county court to fix a time and place for a public hearing upon the convenience and necessity of the incorporation of the district. The date of such hearing shall be not more than thirty (30) days after the receipt of the petition and its date, place and purpose shall be announced by the county judge or chairman of the county court in a notice published not more than fifteen (15) days nor less than seven (7) days prior to the date of the hearing in a newspaper of general circulation in the proposed district, or if there be no such newspaper, then by posting such notice in five (5) conspicuous public places within the boundaries of the proposed district. If at said public hearing the county judge or chairman of the county court finds (a) that the public convenience and necessity requires the creation of the district, and (b) that the creation of the district is economically sound and desirable, he shall enter an order of the court so finding, approving the creation of the district, designating it as "the _____ Utility District of _____ County, Tennessee," defining its territorial limits and

appointing as commissioners of the district those persons nominated in the petition, of whom one (1) shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. Such order shall be filed with the clerk of the court and entered on record. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

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1. *Constitutionality.*

Clauses (a) and (b) of this section do not delegate such an unlimited discretion as to be an unconstitutional delegation of legis-

lative power to the county judge or chairman. *First Suburban Water Utility Dist. v. McCanless* (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

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6-2606. *Appeal to circuit court.*—Any party having an interest in the subject-matter and aggrieved or prejudiced by the finding and adjudication of the county judge or chairman of the county court, may pray and obtain an appeal therefrom to the circuit court of the county in the manner provided by law for appeals from the county court, upon the execution of appeal bond, as provided by law. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27.]

6-2607. *District as municipality—Powers.*—From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a "municipality" or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect

taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commissioners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district unless and until it shall have been established that the public convenience and necessity requires other or additional services. [Acts 1937, ch. 248, § 3; C. Supp. 1950, § 3695.28.]

NOTES TO DECISIONS

1. *Nature of District.*

This section clearly classes and characterizes a utility district created under its provisions as an operation for a state, government-

al or public purpose and as a municipality or public corporation. First Suburban Water Utility Dist. v. McCanless (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

6-2608. *Power to operate utilities.*—Any district heretofore or hereafter created under authority of this chapter is empowered to conduct, operate, and maintain a system or systems for the furnishing of water, sewer, sewage disposal, natural gas, artificial gas, police, fire protection, garbage collection and garbage disposal, street lighting, parks and recreational facilities, or two or more of such systems, and to carry out such purpose it shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, within or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter; provided, that with respect to the conduct and operation of a police protection system nothing contained in this chapter shall be construed as meaning or intending any encroachment upon the police powers of the sheriff of any county in this state, but shall only empower the district to conduct and operate such police protection system when it is enabled to do so through legal arrangements with the sheriff of the county, and other constituted authorities,

in a manner consistent with all provisions of the Constitution of Tennessee; and provided, further, that the inclusion of the power of conducting and operating a police protection system as one of the purposes for which a district may be created, shall not in any wise affect the validity of this section, the legislature hereby expressly declaring its purpose to enact the remainder of this section without the provision herein contained authorizing the conduct and operation of a police protection system, if the inclusion of such provision should be held invalid. [Acts 1937, ch. 248, § 5; 1947, ch. 76, § 2; C. Supp. 1950, § 3695.30; Acts 1951, ch. 262, § 2.]

Cross-References. Extension of service outside district, § 6-604.

NOTES TO DECISIONS

1. *Right to Question Constitutionality.*

The constitutionality of the chapter could not be attacked by the state and county taxing authorities on the ground that this section provides that the district may extend itself beyond its corporate boundaries where there was no

showing that such an extension had in fact been made or that such an extension could militate to the disadvantage of the state and county taxing authorities in the discharge of their duties. *First Suburban Water Utility Dist. v. McCanless* (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

6-2609. *Subscribers' consent to new services.*—No utility district created prior to March 4, 1947, under the terms and provisions of this chapter shall undertake to render, obligate itself to render, or render, services other than those for the furnishing of water, sewer, sewage disposal, fire protection, natural gas or artificial gas, unless and until it shall first have obtained the consent in writing of subscribers representing seventy-five percent (75%) in number of the total subscribers to the existing services furnished by said utility district at the time such written consents are obtained. The determination by the board of commissioners of any such district as to the percentage represented by the written consent of such subscribers shall be conclusive, that no such district may furnish natural gas service to any area now actually served by a private company. [Acts

1937, ch. 248, § 5; 1947, ch. 76, § 2; C. Supp. 1950, § 3695.41 (Williams, § 3695.30); Acts 1951 ch. 262, § 2.]

6-2610. *Powers in carrying out purposes.*—Any district created pursuant to this chapter shall have the power;

(a) To sue and be sued.

(b) To have a seal.

(c) To acquire by purchase, gift, devise, lease or exercise of the power of eminent domain or other mode of acquisition, hold and dispose of real and personal property of every kind within or without the district, whether or not subject to mortgage or any other liens.

(d) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds or leases.

(e) To incur debts, to borrow money, to issue negotiable bonds and to provide for the rights of holders thereof.

(f) To fix, maintain, collect and revise rates and charges for any service.

(g) To pledge all or any part of its revenues.

(h) To make such covenants in connection with the issuance of bonds, or to secure the payments of bonds, that a private business corporation can make under the general laws of the state, notwithstanding that such covenants may operate as limitations on the exercise of any power granted by this chapter.

(i) To use any right-of-way, easement or other similar property right necessary or convenient in connection with the acquisition improvement, operation or maintenance of a utility, held by the state or any political subdivision thereof, provided that the governing body of such political subdivision shall consent to such use. [Acts 1937, ch. 248, § 7; C. Supp. 1950, § 3695.33 (Williams, § 3695.32).]

6-2611. *Eminent domain.*—Any district shall have power to condemn either the fee or such right, title interest, or easement in the property as the board may deem necessary for any of the purposes mentioned in this chapter, and such property or interest in such property may be so acquired whether or not the same is

owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes; provided, however, such prior public use will not be interfered with by this use. Such power of condemnation may be exercised in the mode or method of procedure prescribed by chapter 14 of title 23, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain; provided, however, that where title to any property sought to be condemned is defective, it shall be passed by decree of court; provided, further that where condemnation proceedings become necessary the court in which such proceedings are filed shall upon application by the district and upon the posting of a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just. [Acts 1937, ch. 248, § 18; mod. C. Supp. 1950, § 3695.44 (Williams, § 3695.43).]

6-2612. *General implementing powers.*—Any district created pursuant to the provisions of this chapter shall be vested with all the powers necessary and requisite for the accomplishment of the purpose for which such district is created, capable of being delegated by the legislature. No enumeration of particular powers herein created shall be construed to impair or limit any general grant of power herein contained nor to limit any such grant to a power or powers of the same class or classes as those enumerated. The district is empowered to do all acts necessary, proper or convenient in the exercise of the powers granted herein. [Acts 1937, ch. 248, § 6; C. Supp. 1950, § 3695.32 (Williams, § 3695.31).]

6-2613. *Exemption from state regulation.*—Neither the railroad and public utilities commission nor any other board or commission of like character hereafter created shall have jurisdiction over the district in the management and control of any system, including the regulation of its rates, fees, tolls or charges. [Acts 1937,

ch. 248, § 16; C. Supp. 1950, § 3695.42 (Williams, § 3695.41).]

6-2614. *Terms of commissioners — Vacancies.* — The terms of office of the members of the board of commissioners first appointed shall be two (2), three (3) and four (4) years respectively from date of appointment and thereafter the term of office of the members shall be four (4) years. Members shall hold office until their successors are elected and qualify. Any vacancy shall be filled and new commissioners shall be elected or old commissioners shall be reelected upon the expiration of any term of office by vote of the other commissioners then in office. In the event the two (2) commissioners cannot agree upon a new commissioner to fill any vacancy, they shall certify that fact to the county judge or chairman of the county court within thirty (30) days of the date upon which such vacancy occurs, and, thereupon, within ten (10) days the county judge or chairman of the county court shall appoint a third commissioner to fill such vacancy. [Acts 1937, ch. 248, § 4; C. Supp. 1950, § 3695.29.]

NOTES TO DECISIONS

1. *Removal or Ouster.*

The provisions of this section providing for the appointment of the members of the board of commissioners and their successors are not invalid as making no provi-

sions for the ouster or removal of the commissioners as the provisions of the general ouster law, § 8-2701 et seq., applies. First Suburban Water Utility Dist. v. McCanless (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

6-2615. *Compensation of commissioners — Delegation of powers — Officers — Records — Qualifications.* — The members of the board shall serve without compensation for their services, but shall be entitled to reimbursement for all expenses incurred in connection with the performance of their duties. The board may delegate to one (1) or more of its members or to its agents and employees such powers and duties as it may deem proper, but at its first meeting and at the first meeting of each calendar year thereafter it shall elect one (1) of its members to serve as president, and another of its members as secretary of the commission. The secretary shall keep a

record of all proceedings of the commission which shall be available for inspection as other public records, and shall be custodian of all official records of the district. Only persons resident in the district shall be eligible for election to the board. [Acts 1937, ch. 248, § 4; C. Supp. 1950, § 3695.29.]

6-2616. Powers of commissioners.—The board of commissioners of any district shall have power and authority;

(1) To exercise by vote, ordinance or resolution all of the general and specific powers of the district.

(2) To make all needful rules, regulations and by-laws for the management and the conduct of the affairs of the district and of the board.

(3) To adopt a seal for the district, prescribe the style thereof, and alter the same at pleasure.

(4) To lease, purchase, sell, convey and mortgage the property of the district and to execute all instruments, contracts, mortgages, deeds or bonds on behalf of the district in such manner as the board shall direct.

(5) To inquire into any matter relating to the affairs of the district, to compel by subpoena the attendance of witnesses and the production of books and papers material to any such inquiry, to administer oaths to witnesses and to examine such witnesses.

(6) To appoint and fix the salaries and duties of such officers, experts, agents and employees as it deems necessary, to hold office during the pleasure of the board and upon such terms and conditions as the board may require.

(7) To do all things necessary or convenient to carry out its functions. [Acts 1937, ch. 248, § 8; C. Supp. 1950, § 3695.34 (Williams, § 3695.33).]

6-2617. Publication of annual statement.—Within ninety (90) days after the close of the fiscal year of each district organized and operating under the provisions of this law, the commissioners of the district shall publish in a newspaper of general circulation, published in the county in which the district is situated, a state-

ment showing (a) the financial condition of the district at the end of the fiscal year; (b) the earnings of the district during the fiscal year just ended; (c) a statement of the water rates then being charged by the district, and a brief statement of the method used in arriving at such rates. [Acts 1949, ch. 256, § 1; C. Supp. 1950, § 3695.46 (Williams, § 3695.43a).]

6-2618. Protest of rates.—Within thirty (30) days of the date on which this statement is published, any water user of the district may file with the commissioners of the district a protest, giving reasons why, in the opinion of the water user, the rates so published are too high or too low. Within a period of fifteen (15) days after the end of this thirty (30) day period during which such protest may be filed, the commissioners shall notify each such protestant of a hearing to be held by the commissioners on such protests as may have been filed within the thirty (30) day period prescribed. Upon the hearing date so fixed, which shall be some date within a period of sixty (60) days after giving such notices to the protestants, all such protests shall be heard together by the commissioners. After hearing and examining statements, exhibits and arguments of the protestants, or their counsel the commissioners shall make and spread upon the minutes of the commission their finding as to the reasonableness or unreasonableness of the published rates, and at the same time the commission may increase or decrease such rates upon a finding that they are too low or too high, as the case may be.

The commissioners shall not be required to receive, consider or act upon any protest filed at any time other than within the thirty (30) day period provided in this section.

Any protestant feeling himself aggrieved by the final action of the commissioners under this section may obtain a review of the commissioners' action in the circuit court of the county in which the district is situated through the common law writ of certiorari. [Acts 1949, ch. 256, § 1; C. Supp. 1950, § 3695.46 (Williams, § 3695.43a).]

6-2619. Purposes for which bonds authorized.—Each district shall have power and is hereby authorized from time to time to issue its negotiable bonds in anticipation of the collection of revenues for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending any water, sewer, sewage disposal, natural gas, artificial gas, fire protection, garbage collection or garbage disposal system, systems, or combination thereof, and to pledge to the payment of the interest and principal of such bonds all or any part of the revenues derived from the operation of such system, systems, or combinations thereof. There may be included in the costs for which bonds are to be issued, reasonable allowances for legal, engineering and fiscal services, interest during construction and for six (6) months after the estimated date of completion of construction, and other preliminary expenses, including the expenses, including the expenses of incorporation of the district. [Acts 1937, ch. 248, § 9; C. Supp. 1950, § 3695.35 (Williams, § 3695.34); Acts 1951, ch. 262, § 3.]

6-2620. Terms of bonds.—Said bonds shall be authorized by resolution of the board of the district, and may be issued in one (1) or more series; may bear such date or dates; may mature at such time or times not exceeding forty (40) years from their respective dates; may bear interest at such rate or rates not exceeding six per cent (6%) per annum payable semiannually; may be in such form, either coupon, or registered; may be executed in such manner; may be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, and may contain such terms, covenants and conditions as such resolution or subsequent resolution may provide. Said bonds may be issued for money or property; may be sold in such manner and upon such terms as the board shall determine provided that the interest cost to maturity of the money or property (at its value as determined by such board, whose determination shall be conclusive) received for any issue of said bonds shall not exceed six per cent (6%) per annum payable semiannually. Pending the preparation of the definitive bonds, interim re-

ceipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable within the meaning of and for all purposes of the Uniform Negotiable Instruments Law of the state. [Acts 1937, ch. 248, § 9; C. Supp. 1950, § 3695.35 (Williams, § 3695.34).]

6-2621. *Covenants permissible in bonds.*—Any resolution authorizing the issuance of bonds under this chapter may contain covenants, including, but not limited to (a) the purpose or purposes to which the proceeds of the sale of said bonds may be applied and the deposit, use and disposition thereof; (b) the use, deposit, securing of deposits, and disposition of the revenues of the district, including the creation and maintenance of reserves; (c) the issuance of other additional bonds payable from the revenues of the district; (d) the operation and maintenance of the system or systems; (e) the insurance to be carried thereon and the use, deposit and disposition of insurance moneys; (f) books of account and the inspection and audit thereof and the accounting methods of the district; (g) the nonrendering of any free service by the district; and (h) the preservation of the system or systems, so long as any of the bonds remain outstanding, from any mortgage, sale, lease or other encumbrance not specifically permitted by the terms of the resolution. [Acts 1937, ch. 248, § 10; C. Supp. 1950, § 3695.36 (Williams, § 3695.35).]

6-2622. *Bonds valid despite irregularities.*—Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the district issuing the same. The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the utility for which said bonds are issued. The resolution authorizing

said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. [Acts 1937, ch. 248, § 12; C. Supp. 1950, § 3695.38 (Williams, § 3695.37).]

6-2623. *Remedies of bondholders.*—There shall be and there is created a statutory lien in the nature of a mortgage lien upon any system or systems acquired or constructed in accordance with this chapter, including all extensions and improvements thereto or combinations thereof subsequently made, which lien shall be in favor of the holder or holders of any bonds issued pursuant to this chapter and all such property shall remain subject to such statutory lien until the payment in full of the principal of and interest on said bonds. Any holder of said bonds or any of the coupons representing interest thereon may either at law or in equity, by suit, action, mandamus, or other proceeding, in any court of competent jurisdiction, protect and enforce such statutory lien and compel performance of all duties required by this chapter, including the making and collection of sufficient rates for the service or services, the proper accounting therefor, and the performance of any duties required by covenants with the holders of any bonds issued in accordance herewith.

If any default be made in the payment of the principal of or interest on such bonds, any court having jurisdiction of the action may appoint a receiver to administer said district, and said system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against said system or systems and for the payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of this chapter, and any covenants with bondholders. [Acts 1937, ch. 248, § 11; C. Supp. 1950, § 3695.37 (Williams, § 3695.36).]

NOTES TO DECISIONS

1. *Revenue Held in Trust.*

A utility district cannot lawfully use any current revenue to pay the cost of private sewer lines and connections, all such revenue being

held in trust by the utility commissioners to liquidate bonds of the district. *Cline v. Red Bank Utility Dist.* (1952), 194 Tenn. 255, 250 S. W. (2d) 362.

6-2624. *Bonds payable for revenue.*—No holder or holders of any bonds issued pursuant to this chapter shall ever have the right to compel the levy of any tax to pay said bonds or the interest thereon. Each bond shall recite in substance that said bond and interest thereon is payable solely from the revenue pledged to the payment thereof and that said bond does not constitute a debt of the district within the meaning of any statutory limitation. [Acts 1937, ch. 248, § 13; C. Supp. 1950, § 3695.39 (Williams, § 3695.38).]

6-2625. *Rates sufficient to pay costs and retire bonds.*—The board of commissioners of any district issuing bonds pursuant to this chapter shall prescribe and collect reasonable rates, fees, tolls, or charges for the services, facilities and commodities of its system or systems, shall prescribe penalties for the nonpayment thereof, and shall revise such rates, fees, tolls or charges from time to time whenever necessary to insure that such system or systems shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall be such as will always produce revenue at least sufficient (a) to provide for all expenses of operation and maintenance of the system or systems, including reserves therefor, and (b) to pay when due all bonds and interest thereon for the payment of which such revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor. [Acts 1937, ch. 248, § 14; C. Supp. 1950, § 3695.40 (Williams, § 3695.39).]

6-2626. *Exemption from taxation.*—So long as a district shall own any system, the property and revenue of such system shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to this chapter and the income therefrom shall be exempt from all state, county and municipal taxation, except inheritance,

transfer and estate taxes, and it shall be so stated on the face of said bonds. [Acts 1937, ch. 248, § 15; C. Supp. 1950, § 3695.41 (Williams, § 3695.40).]

NOTES TO DECISIONS

1. *Constitutionality.*

The provision of this section exempting a public utility district created under the authority of this chapter from taxation is not unconstitutional as being in contravention of Const., Art. 2, § 28 but falls within the exception of that section permitting the exemption from taxation of property "such as may be held by the state, by counties, cities or towns, and used exclusively for public or corporation purposes." First Suburban Water Utility Dist. v. McCanless (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

2. —*Right to Question.*

Where suit against a utility district involved no taxes against the

bonds of a utility district, the question of the constitutionality of the provisions of this section exempting such bonds from taxation could not be properly raised. First Suburban Water Utility Dist. v. McCanless (1941), 177 Tenn. 128, 146 S. W. (2d) 948.

3. *Sales and Use Taxes.*

Merchandise purchased by suburban utility district was exempt from sales and use taxes since the effect of collecting such taxes would amount to a direct tax levied by the state on revenue exempt from taxation by the express terms of this section. Madison Suburban Dist. v. Carson (1950), 191 Tenn. 300, 232 S. W. (2d) 277.

6-2627. *Chapter unaffected by other law.*—This chapter is complete in itself and shall be controlling. The provisions of any other law, general, special or local, except as provided in this chapter, shall not apply to a district incorporated hereunder; provided, that nothing in this chapter shall be construed as impairing the powers and duties of the department of health of this state. [Acts 1937, ch. 248, § 17; C. Supp. 1950, § 3695.43 (Williams, § 3695.42).]

CHAPTER 27

POWER DISTRICTS

SECTION.

- 6-2701. Short title.
6-2702. Definition of terms.

SECTION.

- 6-2703. Effect of incorporation.
6-2704. Creation on resolution of municipal governing body.

TITLE 6—Municipal Corporations.

CHAP 26—Utility Districts

Amendments to THE UTILITY DISTRICT ACT OF 1937 Pocket Supplement, Vol. 2, TENN. CODE ANNOTATED Includes all amendments through 1967 General Assembly.

* * * *

CHAPTER 26

UTILITY DISTRICTS

SECTION.

- 6-2603. [Superseded.]
- 6-2604. Hearing and order of approval.
- 6-2607. District as municipality —Powers.
- 6-2608. Power to operate utilities.
- 6-2614. Terms of commissioners —Vacancies.
- 6-2615. Compensation of commissioners — Delegation of Records — Qualifications.
- 6-2619. Purposes for which bonds authorized.
- 6-2628. Districts in two or more counties—Petition.

SECTION.

- 6-2629. Commissioners representing two or more counties.
- 6-2630. Notice of hearing as to two or more counties—Address of district office.
- 6-2631. Terms of commissioners.
- 6-2632. Filing and publication of order as to two or more counties.
- 6-2633. Appeals as to districts in two or more counties.
- 6-2634. Vacancies in board.
- 6-2635. Financial statements in two or more counties.
- 6-2636. Powers of existing districts saved.

6-2601. Short title.

Cited: Weakley County Municipal Elec. System v. Vick (1957), 43 Tenn. App. 524, 309 S. W. (2d) 792; Crossville v. Middle Tennessee Utility Dist. (1961), 208 Tenn. 268, 345 S. W. (2d) 865; Whitehaven Utility Dist. of

Shelby County v. Ramsay (1964, — Tenn. —, 387 S. W. (2d) 451; Pace v. Garbage Disposal Dist. of Washington County (1965), — Tenn. App. —, 390 S. W. (2d) 461.

6-2602. *Petition for creation.*

NOTES TO DECISIONS

1. *Public Convenience and Necessity.*

Jurisdiction to determine whether public convenience and necessity requires that exclusive right of utility district to furnish services

be revoked rests in the county judge or chairman of the county in which the petition for incorporation was presented and granted. *Crossville v. Middle Tennessee Utility Dist.* (1961), 208 Tenn. 268, 345 S. W. (2d) 865.

6-2603. [*Superseded.*]

Compiler's Note. This section (Acts 1953, ch. 122, § 1; Williams, § 3695.27) is superseded by Acts

1955, ch. 275, § 1, set forth herein as §§ 6-2628 - 6-2635.

6-2604. *Hearing and order of approval.*—Upon receipt of such petition it shall be the duty of the county judge or chairman of the county court to fix a time and place for a public hearing upon the convenience and necessity of the incorporation of the district. The date of such hearing shall be not more than thirty (30) days after the receipt of the petition and its date, place and purpose shall be announced by the county judge or chairman of the county court in a notice published not more than fifteen (15) days nor less than seven (7) days prior to the date of the hearing in a newspaper of general circulation in the proposed district, or if there be no such newspaper, then by posting such notice in five (5) conspicuous public places within the boundaries of the proposed district. If at said public hearing the county judge or chairman of the county court finds (a) that the public convenience and necessity requires the creation of the district, and (b) that the creation of the district is economically sound and desirable, he shall enter an order of the court so finding, approving the creation of the district, designating it as "the _____ Utility District of _____ County, Tennessee," defining its territorial limits and appointing as commissioners of the district those persons nominated in the petition, of whom one (1) shall be appointed for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. Such

order shall be filed with the clerk of the court and entered on record.

On the issue of whether or not the public convenience and necessity requires the creation of the district, the county judge or chairman of the county court shall take into consideration the ability of an incorporated city or town to serve the area, and such city or town at the hearing may make known its intention to serve the area. In that event, the county judge or chairman of the county court shall suspend action on the petition for sixty (60) days. Within said sixty (60) days the city or town may submit to the county judge or chairman its plans for serving the area, including the specific area to be served, the facilities to be installed, the services to be supplied, and a time schedule for completing installation of facilities to provide the services, and the county judge or chairman, after considering such plans and hearing the views of the utility district's proponents thereon shall determine a reasonable time within which the city or town must provide the services. If either party thinks that the time is unreasonable, as determined by the county judge or chairman, an appeal may be taken as provided in § 6-2606, to determine said time. If the city or town fails to provide the services within the time so determined, the county judge or chairman, unless he decides that circumstances warrant an extension of time, may create the utility district, acting on the original petition, to serve such area as he decides it can reasonably be expected to serve. If no city or town presents such plans to the county judge or chairman within said sixty (60) days, the petition shall be acted upon as otherwise provided by law. [Acts 1937, ch. 248, § 2; C. Supp. 1950, § 3695.27; Acts 1959, ch. 166, § 1.]

Section to Section Reference.
This section is referred to in
§§ 6-2608, 6-2630.

6-2606. Appeal to circuit court.

Section to Section Reference.
This section is referred to in
§ 6-2608.

NOTES TO DECISIONS

1. *Nature of Review.*

Aggrieved party did not have the right under this section to prosecute a broad appeal without a bill of exceptions or to a trial de novo in the circuit court. *Griffitts v. Rockford Utility Dist.* (1956), 41 Tenn. App. 653, 298 S. W. (2d) 33.

Mere fact that this section used the term "appeal" rather than terms "appeal in nature of writ of error" or "writ of error" would not be sufficient to indicate that

appellant was entitled to broad appeal. *Griffitts v. Rockford Utility Dist.* (1956), 41 Tenn. App. 653, 298 S. W. (2d) 33.

2. *Aggrieved or Prejudiced Party.*

Where resident of proposed utility district failed to have himself formally made a party in county court and made no effort to introduce proof he was not an aggrieved party under this section. *Griffitts v. Rockford Utility Dist.* (1956), 41 Tenn. App. 653, 298 S. W. (2d) 33.

6-2607. *District as municipality—Powers.*—From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a "municipality" or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commisisoners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district and no other person, firm or corporation shall furnish or attempt to furnish any of the said services in the area embraced by the district, unless and until it shall have been established that the public convenience and necessity requires other or additional services; provided, that this chapter shall not amend or alter §§ 6-308—6-319, as amended.

In counties having a population of 482,000 or more according to the federal census of 1950 or any subsequent federal census, in the event no affirmative action is taken by the newly formed utility district within one (1) year of the date of filing of order of incorporation, the chairman of the county court may hold a hearing, after notification of the duly appointed commissioners, and determine if the utility district is proceeding with

dispatch and diligence with its proposed program, and, should the chairman find to the contrary, he may revoke and cancel the order of approval and incorporation. Provided, further, that in the event such a utility district shall fail to render any of the services for which it was created within a period of four (4) years after the issuance of its order of incorporation; and Provided further, that in addition to failure to render such services within such period it has failed to acquire within such period any assets or facilities necessary for the accomplishment of its purpose, said order of incorporation shall be void ipso facto and such utility district shall no longer be deemed to exist. However, the foregoing provision shall not apply to any utility district whose continuing existence has been approved by order of the county judge or chairman of the county court in which the original order of approval was granted within one (1) year prior to March 25, 1963, and which district under the terms of the original order approving its creation must annually renew its petition for incorporation.

After one (1) year from the date of the filing of the order of incorporation of any utility, the name of said utility may be changed by the commissioners filing a petition with the county judge of the county wherein such order of incorporation was filed, setting forth the present name of the utility, the name to which the commissioners want to change and the reasons for such change. Upon good cause being shown, the county judge shall issue such order, which shall be filed with the clerk of the court and entered on record. [Acts 1937, ch. 248, § 3; C. Supp. 1950, § 3695.28; Acts 1959, ch. 224, § 1; 1959, ch. 327, § 1; 1963, ch. 160, § 1; 1963, ch. 305, § 1.]

Section to Section Reference.
This section is referred to in §§ 6-318, 6-3715.

Law Reviews. Local Government Law—1962 Tennessee Survey (Gil-

bert Merritt, Jr.), 16 Vand. L. Rev. 800.

Cited: Hamilton County v. Chattanooga (1958), 203 Tenn. 85, 310 S. W. (2d) 153.

NOTES TO DECISIONS

ANALYSIS

2. Exclusive right to furnish service.
3. Boundaries.
4. Services.
5. Modification of franchise—Review.

2. *Exclusive Right to Furnish Service.*

Where utility district did not refuse service but terms on which service was offered was less advantageous than that which could be obtained from another source, chancery court had no authority to authorize applicant to obtain service from such other source. *Chandler Inv. Co. v. Whitehaven Utility Dist.* (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

Where subdivision was within the territorial limits of utility district, builder of subdivision could not obtain right to contract with city instead of utility district for water service by declaratory judgment proceedings in chancery court, but sole recourse was to petition the quarterly county court under the provisions of this section. *Chandler Inv. Co. v. Whitehaven Utility Dist.* (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

Utility district had exclusive right to distribute gas within city under the statute and it was immaterial that charter of city withheld right to grant an exclusive franchise. *Crossville v. Middle Tennessee Utility Dist.* (1961), 208 Tenn. 268, 345 S. W. (2d) 865.

Where utility district knowingly allowed city and county to construct sewer projects within its boundaries with full knowledge of its exclusive right to provide such services within its boundaries and delayed bringing suit for eight years, utility district's suit seeking exclusive right to provide utility services within its boundaries was barred by laches. *Whitehaven Utility Dist. of Shelby County v.*

Ramsay (1964), — Tenn. —, 387 S. W. (2d) 351.

3. *Boundaries.*

Where boundaries of utility district had been fixed by the legislature, court possessed no power to detach territory from such district in absence of special legislation. *Consolidated Gray-Fordtown-Colonial Heights Utility District of Washington and Sullivan Counties v. O'Neill* (1962), 209 Tenn. 342, 354 S. W. (2d) 63.

4. *Services.*

Even though court was without jurisdiction to detach territory from one utility district and add it to another, Supreme Court would remand suit to allow amendment of complaint for purpose of allowing proof as to whether utility district was rendering adequate services. *Consolidated Gray-Fordtown-Colonial Heights Utility District of Washington and Sullivan Counties v. O'Neill* (1962), 209 Tenn. 342, 354 S. W. (2d) 63.

Where evidence did not establish that garbage disposal district had failed to render adequate services or that petitioner for modification of franchise could supply garbage collection services county judge was without power to modify franchise or grant petitioner authority to collect garbage within the district. *Pace v. Garbage Disposal Dist. of Washington County* (1965), — Tenn. App. —, 390 S. W. (2d) 461.

5. *Modification of Franchise—Review.*

Action of county judge in granting modification of district's exclusive franchise was appealable to circuit court where it was reviewable as the action of an administrative body and would be sustained if supported by material evidence. *Pace v. Garbage Disposal Dist. of Washington County* (1965), — Tenn. App. —, 390 S. W. (2d) 461.

6-2608. *Power to operate utilities.*—Any district heretofore or hereafter created under authority of this chap-

ter is empowered to conduct, operate and maintain a system or systems for the furnishing of water, sewer, sewage disposal, natural gas, artificial gas, police, fire protection, garbage collection and garbage disposal, street lighting, parks and recreational facilities, transit facilities, transmission of industrial chemicals by pipeline to or from industries or plants located within the boundary of the district, community antenna television service, except for community antenna television service in counties having a population of more than 60,000 but less than 60,100, according to the 1960 federal census, or two (2) or more of such systems, and to carry out such purpose it shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, within or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter; provided, that with respect to the conduct and operation of a police protection system nothing contained in this chapter shall be construed as meaning or intending any encroachment upon the police powers of the sheriff of any county in this state, but shall only empower the district to conduct and operate such police protection system when it is enabled to do so through legal arrangements with the sheriff of the county, and other constituted authorities, in a manner consistent with all provisions of the Constitution of Tennessee; and provided, further that the inclusion of the power of conducting and operating a police protection system as one of the purposes for which a district may be created, shall not in any wise affect the validity of this section the legislature hereby expressly declaring its purpose to enact the remainder of this section without the provision herein contained authorizing the conduct and operation of a police protection system if the inclusion of such provision should be held to be invalid. The term "transit facilities" shall include all real and personal property needed to provide public passenger transportation by means of trolley coach, bus, motor coach, or any combination thereof including ter-

minal, maintenance and storage facilities. Such community antenna television service shall be limited to: (1) charging for wire or cable service only on the basis of fixed monthly charges and with no per program charges; (2) and for such wire or cable service only to programs transmitted from television stations licensed by the federal communications commission; (3) and for such wire or cable service only to programs broadcast free of charge to the entire viewing public; (4) and without altering any characteristic of the incoming signal other than its frequency and amplitude, including but not limited to altering the program content, including station breaks, by addition or deletion. Such community antenna television service shall include the right to acquire and hold such real and personal property as may be needed to accomplish the foregoing.

A system or facilities for "the transmission of industrial chemicals by pipeline," as used herein shall mean and include facilities or a system used or useful in the transmission by pipeline of industrial chemicals and related commodities, in liquid, gaseous, or solid form, including raw materials, processed products, or by-products, to or from plants or industries located within the boundary of the district, on an individual basis, or in company with other plants, and to or from docks, terminals or tank farms located within or without the boundary of the district, but within the same county. Such system or facilities shall include, but not be limited to, the pipelines, docks, terminals, tank farms, compressor stations, storage and temperature treatment facilities, rights-of-way, and together with all real and personal property and equipment appurtenant to, or useful in connection with, such facilities. Before any district shall be authorized to conduct, operate or maintain such system or facilities for transmission of industrial chemicals by pipeline, as provided hereby, the board of commissioners thereof, whether previously installed in such office or nominated only, shall submit a petition signed in their own names to the county judge or chairman of the county court in which the order approving the creation of the district was or shall be entered, whereupon

the county judge or chairman shall, upon notice published as provided by § 6-2604 and public hearing, determine whether or not the project so proposed will promote industry and develop trade to provide against low employment, and enter an order of the court so finding. On the issue of whether or not industry, trade and employment will be so promoted and developed, the county judge or chairman shall take into consideration the plants proposed to be served by the facilities for transmission of industrial chemicals by pipeline, but no project so proposed to be undertaken shall be found not to promote and develop industry, trade and employment for either of the following reasons: (1) that the project will provide service for a single plant; or (2) that the project will serve to maintain existing industry and employment rather than encourage new industry and additional employment. Any party in interest, including any subscriber to existing services of the district, shall have the right of appeal from said order as provided by § 6-2606, but no consent to the undertaking of such district services by any number of existing subscribers shall be required, the provisions of § 6-2609 notwithstanding.

Incorporated cities and towns having a population of 5,000 or over shall have the prior right as respects utility districts to extend water, sewer or other utilities in any territory within five (5) miles of their corporate limits; where an incorporated city or town has a population of less than five thousand (5,000), the limit shall be three (3) miles; provided, that this provision shall not apply within the boundaries of a utility district or to facilities heretofore extended by a utility district beyond its boundaries; and provided, further, that a utility district may extend water, sewer or other utility facilities into such an area through agreement with the city or town concerned. A city or town shall lose its prior right under the following conditions: (1) where an agreement cannot be reached, the utility district, by a resolution setting out the area to be served and the type of utility, shall notify the city or town of its intention to serve the area; (2) after receipt of such notice, the city or town

shall have sixty (60) days in which to adopt an appropriate ordinance or resolution determining to serve the area within a specified time; the utility district may within ten (10) days appeal to the county judge or chairman of the county court of the county in which the major part of the land area is located if it considers the time so determined is too long, whereupon the county judge or chairman after hearing both parties shall determine a reasonable time for the city or town to provide the services, and further appeal may be taken by either party as provided in § 6-2606 and (3) upon failure of the city or town to provide the services within the time so determined, the utility district shall be authorized to serve any part of the area not already served by the city or town.

Section 6-2619, authorizing the issuance of revenue bonds for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending any facility or system authorized by this chapter, being "The Utility District Law of 1937," is hereby made applicable to any district undertaking to exercise the power conferred by this section to conduct, operate and maintain a system or facilities for the transmission of industrial chemicals by pipeline. [Acts 1937, ch. 248, § 5; 1947, ch. 76, § 2; C. Supp. 1950, § 3695.30; Acts 1951, ch. 262, § 2; 1957, ch. 128, § 1; 1959, ch. 166, § 2; 1961, ch. 216, § 1; 1963, ch. 98, § 1; 1963, ch. 372, § 1; 1965, ch. 87, §§ 2-4; 1965, ch. 182, § 1.]

Amendments. Acts 1965, ch. 87 amendment inserted the words, "transmission of industrial chemicals by pipeline to or from industries or plants located within the boundary of the district." after "transit facilities" in the first sentence of the first paragraph; inserted the present second paragraph; and added the final paragraph.

Acts 1965, ch. 182 deleted "except for community antenna tele-

vision services in counties having a population of more than 114,100 but less than 114,200, and" from between "service" and "except for" in the first sentence.

Effective Dates. Acts 1965, ch. 88, § 6. March 10, 1965.

Acts 1965, ch. 182, § 2. March 20, 1965.

Section to Section Reference. This section is referred to in § 6-604.

NOTES TO DECISIONS

Cross-Reference. See notes to § 6-2607. Consolidated Gray-Ford-town-Colonial Heights Utility District of Washington and Sullivan Counties v. O'Neill (1962), 209 Tenn. 342, 354 S. W. (2d) 63.

2. Exclusive Franchise.

Where city carried on a water line operation outside city limits

under private contracts, as setting variable rates between individuals in the area and reserving right to discontinue service in a water shortage, it has no franchise sufficient to entitle it to question an exclusive franchise given to a water district. Johnson City v. Milligan Utility Dist. (1955), 38 Tenn. App. 520, 276 S. W. (2d) 748.

6-2609. Subscribers' consent to new services.

Section to Section Reference. This section is referred to in § 6-2608.

6-2610. Powers in carrying out purposes.

Cited: Chandler Inv. Co. v. Whitehaven Utility Dist. (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

6-2611. Eminent domain.

NOTES TO DECISIONS

1. Application.

Where a public service corporation caused erosion of plaintiff's realty by releasing large amounts of water daily across his land, such amounted to the taking of a property right, the remedy for

which would be action under § 28-1423, with limitation as to time to sue for damages governed by § 23-1424, not under § 28-305. Murphy v. Raleigh Utility Dist. of Shelby County (1963), 218 Tenn. 228, 373 S. W. (2d) 455.

6-2612. General implementing powers.

Cited: Chandler Inv. Co. v. Whitehaven Utility Dist. (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

6-2613. Exemption from state regulation.

Cited: Chandler Inv. Co. v. Whitehaven Utility Dist. (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

6-2614. Terms of commissioners—Vacancies.—The terms of office of the members of the board of commis-

sioners first appointed shall be two (2), three (3) and four (4) years respectively from date of appointment and thereafter the term of office of the members shall be four (4) years. Members shall hold office until their successors are elected and qualify. Any vacancy shall be filled and new commissioners shall be elected or old commissioners shall be re-elected upon the expiration of any term of office by vote of the other commissioners then in office. In the event the two (2) commissioners cannot agree upon a new commissioner to fill any vacancy, they shall certify that fact to the county judge or chairman of the county court within thirty (30) days of the date upon which such vacancy occurs, and, thereupon, within ten (10) days the county judge or chairman of the county court shall appoint a third commissioner to fill such vacancy. Provided, however, that in counties having a population of 482,000 or more according to the federal census of 1950 or any subsequent federal census the three (3) commissioners shall be appointed for terms to run until the first of the month following the next regular general county election and at the next regular general county election one (1) shall be elected by the qualified voters living within the boundaries of the district for a term of two (2) years, one for a term of four (4) years and one for a term of six (6) years. After that, there shall be elected at the regular general election held in the county each two (2) years, a commissioner for a full term of six (6) years. All qualified voters living in the boundaries of the utility district shall be eligible to vote for such commissioners. Candidates for office as commissioner shall qualify with the county election commission at least forty-five (45) days before the date of the election, provided, further, that all utility districts in existence in any such county on March 20, 1959 shall proceed to elect their commissioners in the same manner as above provided for new utility districts. [Acts 1937, ch. 248, § 4; C. Supp. 1950, § 3695.29; Acts 1959, ch. 266, § 1.]

6-2615. *Compensation of commissioners—Delegation of powers—Officers—Records—Qualifications.*—The members of the board, except as provided in the next para-

graph, shall serve without compensation for their services, but shall be entitled to reimbursement for all expenses incurred in connection with the performance of their duties. The board may delegate to one (1) or more of its members or to its agents and employees such powers and duties as it may deem proper, but at its first meeting and at the first meeting of each calendar year thereafter it shall elect one (1) of its members to serve as president, and another of its members as secretary of the commission. The secretary shall keep a record of all proceedings of the commission which shall be available for inspection as other public records, and shall be custodian of all official records of the district. Only persons resident in the district shall be eligible for election to the board.

Except as to counties having a population of not less than 41,000 nor more than 41,600 according to the federal decennial census of 1960 or any subsequent federal census, and except as to any utility district containing less than five (5) counties, the members of the board of commissioners shall be entitled to receive compensation for their services in an amount not to exceed twenty-five dollars (\$25.00) per day for each day's attendance of the meetings of said board in the performance of their official duties. The amount of compensation shall be fixed by the board of commissioners but the same shall not exceed the sum of twenty-five dollars (\$25.00) per day. Provided, however, that no member of a board of commissioners shall draw compensation in excess of three hundred dollars (\$300) for such services during any one calendar year. [Acts 1937, ch. 248, § 4; C. Supp. 1950, § 3695.29; Acts 1963, ch. 193, §§ 1, 2.]

6-2616. Powers of commissioners.

Cited: Chandler Inv. Co. v. Whitehaven Utility Dist. (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

NOTES TO DECISIONS

1. Power to Bind District.

The commissioners act for and on behalf of the residents of the district and the bondholders and if they act within the apparent scope of their authority their acts or

omissions are binding on the utility district, the members and residents thereof and the bondholders. *Whitehaven Utility Dist. of Shelby County v. Ramsay* (1964), — Tenn. —, 387 S. W. (2d) 351.

*6-2617. Publication of annual statement.**Section to Section Reference.*

This section is referred to in § 6-2635.

6-2619. Purposes for which bonds authorized.—Each district shall have power and is hereby authorized from time to time to issue its negotiable bonds in anticipation of the collection of revenues for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending any facility or system authorized by this chapter, or any combination thereof, and to pledge to the payment of the interest and principal of such bonds all or any part of the revenues derived from the operation of such facility, system, or combination thereof. There may be included in the costs for which bonds are to be issued, reasonable allowances for legal, engineering and fiscal services, interest during construction and for six (6) months after the estimated date of completion of construction, and other preliminary expenses, including the expenses of incorporation of the district. [Acts 1937, ch. 248, § 9; C. Supp. 1950, § 3695.35 (Williams, § 3695.34); Acts 1951, ch. 262, § 3; 1963, ch. 104, § 1.]

Cross-References. Limitation of actions on bonds, § 28-313.

Section to Section Reference. This section is referred to in § 6-2608.

6-2623. *Remedies of bondholders.*

NOTES TO DECISIONS

2. *Suit Requiring Furnishing of Service—Parties.*

Bondholders were not necessary parties to declaratory proceeding brought by builders of subdivision where bill asked that court determine the rights of complaint to contract for water service from a source other than the district or in the alternative that the district be

required to construct lines to the subdivision where the chancellor did not order the utility to build such lines, and if he did order the building of such lines would not have ordered them built out of revenues pledged to payment of bonds, *Chandler Inv. Co. v. Whitehaven Utility Dist.* (1957), 44 Tenn. App. 1, 311 S. W. (2d) 603.

6-2627. *Chapter unaffected by other law.*

Law Reviews. Local Government Law—1962 Tennessee Survey (Gilbert Merritt, Jr.), 16 Vand. L. Rev. 800.

NOTES TO DECISIONS

1. *Private Acts.*

This section superseded provision of private act incorporating city and it was immaterial whether

charter of city withheld from it the right to grant an exclusive franchise. *Crossville v. Middle Tennessee Utility Dist.* (1961), 208 Tenn. 268, 345 S. W. (2d) 865.

6-2628. *Districts in two or more counties—Petition.*—Utility districts embracing territory in two (2) or more counties may be created in the manner provided in this chapter. The petition for the incorporation of such utility district may be submitted to the county judge or chairman of the county court of any one (1) of the counties situated in whole or in part in such proposed district. [Acts 1955, ch. 275, § 1.]

6-2629. *Commissioners representing two or more counties.*—The commissioners nominated in such petition shall be designated in such a manner that each county situated in whole or in part in the proposed district shall be represented on the board of commissioners by at least one (1) resident of such county and of the district, and the judge or chairman shall appoint commissioners in like manner. If the proposed district is to comprise two (2) counties or parts thereof the petition shall nominate three (3) commissioners. If the proposed district is to comprise three (3) or more counties or parts thereof the petition shall nominate a number of commissioners equal to the number of counties or parts thereof to be

included in such district, provided, however, that where the proposed district is to comprise an even number of counties or parts thereof, the petition shall nominate a number of commissioners equal to the number of counties plus one (1) commissioner at large. If the proposed district is to comprise seven (7) or more counties or parts thereof, the petition shall nominate seven (7) residents of the district and it shall not be necessary for each county to be represented on the board, however each of the seven (7) commissioners shall be from separate counties, it being the purpose and intent hereof to limit the number of commissioners of any district to seven (7). [Acts 1955, ch. 275, § 1.]

6-2630. Notice of hearing as to two or more counties—Address of district office.—The notice of public hearing on the convenience and necessity of the incorporation of the district shall be published as provided in § 6-2604 in each of the counties situated in whole or in part in such proposed district in a newspaper published and having a general circulation therein. If there is no such newspaper in any of said counties, notice shall be given in such county or counties by posting as provided in § 6-2604. Such notice shall also be given by registered mail to the county judge or chairman of each county situated in whole or in part within such proposed district.

The petition for the incorporation of such utility district, the notice of public hearing thereon, and the order creating such district, in addition to other requirements of this chapter, shall state the address of the principal office of such utility district. [Acts 1955, ch. 275, § 1.]

6-2631. Terms of commissioners.—In cases where more than three (3) commissioners are nominated under the provisions of this chapter, such commissioners shall be appointed for terms of two (2), three (3) and four (4) years, the number of commissioners appointed for each such term to be as nearly equal as possible. [Acts 1955, ch. 275, § 1.]

6-2632. Filing and publication of order as to two or more counties.—A certified copy of the order creating such district shall be filed with the county court clerk

of each of the counties included in whole or in part in such district and shall be entered of record. A copy of such order shall also be published in each of the counties situated in whole or in part within such district in a newspaper published and having a general circulation in such county, or if there is no such newspaper in any such county a copy of the order shall be posted in five (5) conspicuous public places within such county. A certified copy of such order shall also be filed with the secretary of state in the state of Tennessee. Upon such filing and publication and/or posting, the incorporation of such district shall be complete. [Acts 1955, ch. 275, § 1.]

6-2633. Appeals as to districts in two or more counties.—Appeals from an order creating such a district may be prayed as provided in this chapter to the circuit court of any county included in whole or in part in such district. [Acts 1955, ch. 275, § 1.]

6-2634. Vacancies in board.—Any vacancy in the board of commissioners shall be filled by the remaining commissioners as provided in this chapter by electing a resident of the county from which his predecessor was appointed or elected, provided that a commissioner at large may be elected from any county in the district. The office of any commissioner other than a commissioner at large shall become vacant if the incumbent ceases to reside in the county from which he was elected. [Acts 1955, ch. 275, § 1.]

6-2635. Financial statements in two or more counties.—Statements published pursuant to § 6-2617 shall be published in each of the counties situated in whole or in part in such district in a newspaper having general circulation therein. [Acts 1955, ch. 275, § 1.]

6-2636. Powers of existing districts saved.—It is expressly the legislative intent that nothing in §§ 6-2628—6-2635 shall be construed to be retroactive and that the terms and conditions of said sections will in no wise affect or abridge the rights, powers, privileges and duties of utility district existing March 21, 1955. [Acts 1955, ch. 275, § 2.]

* * * *

EMPLOYER'S OFFICIAL EXHIBIT No. 2

J. B. Howe,
County Judge

Verdie G. Payne,
Deputy Clerk

J. O. Phillips,
County Attorney

Shirley R. Morelock,
Deputy Clerk

HAWKINS COUNTY COURT
Dennie Payne, Clerk
ROGERSVILLE, TENN. 37857

STATE OF TENNESSEE)
HAWKINS COUNTY)

I, Dennie Payne, County Court Clerk of the above named State and County, do hereby certify the within to be a true and perfect copy of the Petition as filed in my office on December 4, 1957, asking for a hearing to be set for the purpose of the creation of a Utility District known as "THE NATURAL GAS UTILITY DISTRICT OF HAWKINS COUNTY TENN." as provided by Sections 6-2601 - 6-2636 of the Tennessee Code Annotated.

Given under my hand and seal in office at Rogersville, Tennessee, this the 19th day of June, 1967.

/s/ Dennie Payne
County Court Clerk
Hawkins County, Tennessee

TO THE HONORABLE JOHN K. WILLIAMS,
CHAIRMAN OF THE COUNTY COURT OF HAWK-
INS COUNTY, TENNESSEE.

The ex parte petition for the creation of a utility district, as provided by Sections 6-2601 - 6-2636 of the Tennessee Code Annotated.

YOUR PETITIONERS, WHOSE NAMES ARE SUB-
SCRIBED BELOW, RESPECTFULLY SHOW TO THE
COURT:

1.

Each of the petitioners are legal residents, within the boundaries of the proposed utility district as hereinafter described, and the owners of real estate therein.

2.

The utility district proposed to be created hereby intends to serve its area with natural gas, which is not now available therein. Said district will serve as a distributor and retailer of natural gas.

3.

The proposed corporate name of said district is "THE NATURAL GAS UTILITY DISTRICT OF HAWKINS COUNTY, TENN.", and its boundaries shall be the entire area of Hawkins County, Tenn. (excluding, however, the areas encompassed by the territorial boundaries of three existing utility districts within said County, namely, (a) First Utility District of Hawkins County, Tenn., (b) Bulls Gap Utility District of Hawkins County, Tenn., & (c) Surgoinsville Utility District of Hawkins County, Tenn.).

4.

The estimated cost of the construction of the facilities of said district is the sum of one million dollars (\$1,000,000.00).

5.

he following named persons, residents of said District, are hereby nominated as commissioners of the District:

Robert S. Lane	—Term of two years
Lance Rogan	—Term of three years
George O. Baker	—Term of four years

WHEREFORE, PREMISES CONSIDERED, PETITIONERS PRAY:

- 1 That said Utility District be created, after a public hearing, as provided by law.
- 2 That the aforesaid persons be named as commissioners of the District.
- 3 And for general relief.

(Name)	(Address)
s) C. C. Johnson, M.D.	Rogersville, Tenn.
s) W. F. Phipps	Rogersville, Tenn.
s) Owen K. Alley	Rogersville, Tenn.
s) Jack A. Cooter	Rogersville, Tenn.
s) Reid Terry	Rogersville, Tenn.
s) Fred Harrison	Rogersville, Tenn.
s) E. M. Henderson, M.D.	Rogersville, Tenn.
s) (Not legible)	Rogersville, Tenn.
s) George L. Googe	Pressmen's Home
s) Thos. E. Dunwody	Pressmen's Home
s) Howard Sullivan	Pressmen's Home
s) Lon R. Beale	110 Main St. Rogersville, Tenn.
s) J. S. Lyons, M.D.	Rogersville, Tenn.
s) James O. Phillips, Jr.	626 E. Main Rogersville, Tenn.
s) (Not legible)	
s) W. H. Lyons, M.D.	Rogersville, Tenn.
s) Hiram D. Heck	Rogersville, Tenn.
s) (Not legible)	Rogersville, Tenn.
s) (Not legible)	Rogersville, Tenn.
s) John E. Beal	Rogersville, Tenn.

(Name)	(Address)
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) Joe A. Chambers	Rogersville, Tenn.
(s) Robert L. Ring	Rogersville, Tenn.
(s) M. B. Jones, Sr.	Rogersville, Tenn.
(s) Tom H. Rogan	Rogersville, Tenn.
(s) Dan Anderson	Rogersville, Tenn.
(s) Arthur Lyons	Rogersville, Tenn.
(s) Robert C. Armstrong, Jr.	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) John Dalton	Rogersville, Tenn.
(s) Paul Greene	Rogersville, Tenn.
(s) Kenneth Honder	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) Ernest Henderson	Rogersville, Tenn.
(s) J. H. McDonald	Rogersville, Tenn.

EMPLOYER'S OFFICIAL EXHIBIT No. 3

J. B. Howe,
County Judge

Verdie G. Payne,
Deputy Clerk

J. O. Phillips,
County Attorney

Shirley R. Morelock,
Deputy Clerk

HAWKINS COUNTY COURT

Dennie Payne, Clerk
ROGERSVILLE, TENN. 37857

STATE OF TENNESSEE)
HAWKINS COUNTY)

I, Dennie Payne, County Court Clerk of the above named State and County, do hereby certify the within to be a true and perfect copy of the ORDER creating a Natural Gas Utility District for Hawkins County, Tennessee, as it appears of record in this office in Quorum Book #11. Page 347, and bearing date of December 16, 1957.

Given under my hand and seal this June 19, 1967.

/s/ Dennie Payne
County Court Clerk
Hawkins County, Tennessee

IN RE: THE NATURAL GAS UTILITY DISTRICT
OF HAWKINS COUNTY, TENNESSEE.

Before John K. Williams
Chairman of the County Court
of Hawkins County, Tennessee

ORDER

This matter came on to be heard before the Honorable John K. Williams, Chairman of the County Court of Hawkins County, Tennessee, on this 16th day of December, 1957, pursuant to a petition duly filed with the undersigned by more than twenty-five (25) owners of real property residing within the boundaries of the proposed Utility District, for the creation of a Utility District in accordance with the provisions of Sections 6-2601 - 6-2636 of the Tennessee Code as amended.

After hearing the evidence, and upon due consideration thereof, it satisfactorily appears that the public convenience and necessity requires the creation of the proposed Utility District, and that the creation of the District is economically sound and desirable. It is accordingly ordered and adjudged that The Natural Gas Utility District of Hawkins County, Tennessee, is hereby created.

The boundaries of said Utility District shall be:

The entire area of Hawkins County, Tennessee, (*excluding*, however, the areas encompassed by the territorial boundaries of three existing Utility Districts within the same county, namely: First Utility District of Hawkins County, Tennessee; Bulls Gap Utility District of Hawkins County, Tennessee; and Surgoinsville Utility District of Hawkins County, Tennessee).

The following persons are hereby appointed as Commissioners of said Utility District for the terms set opposite their respective names:

Robert S. Lane	2 years
Lance Rogan	3 years
George O. Baker	4 years

The costs of this proceeding, including the cost of publication of notice of this hearing, are hereby taxed against the several petitioners.

The Clerk of the County Court shall enter this order upon his records.

/s/ John K. Williams
Chairman of the
County Court of
Hawkins County, Tennessee

DECISION AND DIRECTION OF ELECTION (Case No. 10-RC-7070)

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before George L. Card, Jr., Hearing Officer. Thereafter, the Employer and the Petitioner filed brief.

The National Labor Relations Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the National Labor Relations Board finds:

1. The Employer, also referred to as the District, moved to dismiss the petition on grounds that, as an exempt political subdivision of the State of Tennessee, the Board may not assert jurisdiction herein. In rejecting this contention, we find that the Employer is not a political subdivision within the meaning of Section 2(2) the National Labor Relations Act, as amended.¹

¹Section 2(2) reads in material part: "The term 'employer' . . . shall not include . . . any State or political subdivision thereof. . . ."

In this connection, the facts show that the Employer was incorporated in December 1957 under the provisions of the Tennessee Utility District Act and is engaged in the sale and distribution of natural gas to residential houses, commercial businesses, and industrial firms, all of which are located within Hawkins County, Tennessee.

The Respondent is organized to supply gas utility service without pecuniary profit. The Respondent conducts its business without supervision of the State or any political subdivision thereof. It hires its own employees, and sets their terms and conditions of employment. It also has the usual powers of a private corporation, e.g., it may sue and be sued, incur obligations, issue bonds, sell and encumber its property, and enter into contracts necessary or convenient to the exercise of the powers granted to it.

The Respondent contends, however, that it is not the customary public utility inasmuch as the Tennessee statute under which it is organized specifically declares that a utility district is a "municipality" or "public corporation,"² and the Supreme Court of Tennessee has held that utility districts are "arms or instrumentalities" of

² Tennessee Code, title 6, ch. 26, sec. 7, District as municipality—Powers.

From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a "municipality" or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the Board of commissioners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district unless and until it shall have been established that the public convenience and necessity requires other or additional services. [Acts 1937, ch. 248, sec. 3; C. Supp. 1950, sec. 3695.28.]

the State of Tennessee.³ However, while such state law declarations and interpretations are given careful consideration by the Board, they are not necessarily controlling.⁴ Rather, the determination of whether a particular entity falls within the exemption for political subdivisions entails an assessment of all relevant factors. Upon examination of the instant record in the light of the "economic realities and statutory purposes,"⁵ we are satisfied that the Employer exists as an essentially private venture, with insufficient identity with or relationship to the State of Tennessee to support the conclusion that it is an exempt governmental employer under the Act. Thus, unlike the usual situation where jurisdiction has been declined on political subdivision grounds,⁶

³ First Suburban Water Utility Dist. v. McCanless, 177 Tenn. 128, 146 S. W. 2d 948 (1941).

⁴ In N.L.R.B. v. Randolph Electric Membership Corporation and N.L.R.B. v. Tri-County Electric Membership Corporation, 343 F.2d 60, 62 (C.A. 4), the Court, in sustaining the Board's finding that the companies were not "political subdivisions" despite the State legislature's declaration to the contrary and similar interpretations by State Attorney Generals, held:

In the absence of a plain indication to the contrary, however, it is to be assumed when Congress enacts a statute that it does not intend to make its application dependent on State law.

In accord: N.L.R.B. v. Hearst Publications, 322 U.S. 111, 123 (1944), "... Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by ... varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective States may see fit to adopt for the disposition of unrelated, local problems."

⁵ See Randolph, *supra*, at p. 62.

⁶ See, e.g., Mobile Steamship Association, et al., 8 NLRB 1297, where the State Docks Commission, one of the employers, was created by specific legislation of the State of Alabama; Oxnard Harbor District, 34 NLRB 1285, a harbor district organized by district residents under a general enabling act of California, but governed by a board of commissioners elected for a term of office by qualified voters of the district; New Jersey Turnpike Authority, 2-RC-2245, April 16, 1954, an authority specifically created by the Legislature and governed by members appointed by the Governor with advice and consent of the Senate; New Bedford, Woods Hole,

the Employer in this case is neither created directly by the State,⁷ nor administered by State-appointed or elected officials.⁸ Furthermore, its operations and services do not differ significantly from those of enterprises in private industry including utilities whose employees are entitled to the benefits of the Act. The Employer is completely autonomous in the conduct of its day-to-day affairs, with the State exercising no supervisory role with respect thereto, or reserving any power to remove or otherwise discipline those responsible for the Employer's operations. In these circumstances, we are satisfied that the State pronouncements are not determinative of the public nature of the Employer's functions and activities. We are also not persuaded that mere possession of the power of eminent domain which, as here, has been conferred in aid of a venture which is essentially private in nature, requires us to find that the Employer constitutes a political subdivision under Section 2(2) of the Act. In this regard, we think it significant that legislatures have frequently delegated such power to nonexempt privately-owned and operated service corporations.⁹ Indeed,

Martha's Vineyard, and Nantucket Steamship Authority, 127 NLRB 1322, a body corporate created by Massachusetts, consisting of members appointed and removed by the Governor with the advice and consent of the Executive Council.

⁷ The Utility Districts are not created directly by the State. They are formed by petition of property owners upon a County Judge's determination of the feasibility thereof. Thus, the District is no more a direct creation of the State than such privately-owned public service companies as railroads, and motor carriers, which also require some form of governmental approval, such as a certificate of convenience and necessity.

⁸ The County Judge exercises no independent discretion in naming the members of the Board of Commissioners. He must by statute appoint those persons nominated in the petition seeking formation of a district.

⁹ *N. C. Public Service Co. v. Southern Power Co.*, 282 F.2d 837 (C.A. 4), writ of cert. denied, 263 U.S. 508; *Whiting Mfg. Co. v. Carolina Aluminum Co.*, 207 N. C. 52, 175 S. E. 698; *Berry v. Southern Pine Electric Power Assn.*, 222 Miss. 260, 76 So. 2d 212; *Bookhart v. Central Electric Power Coop.*, 219 S. C. 414, 65 S. E.

the Tennessee Legislature itself has delegated such authority to private corporations.¹⁰

In these circumstances we find that the District is an Employer within the meaning of Section 2(a) of the National Labor Relations Act, as amended. Accordingly, and as the record shows and the parties agree that the Employer's operations satisfy the Board's commerce standards for public utilities, we find that the Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c) (1) and Section 8(6) and (7) of the Act.

4. In accordance with the parties' stipulation, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All pipe fitters employed at the Employer's Rogersville, Tennessee, operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate, as early as possible, but not later than 30 days from the date below. The Regional Director for Region 10 shall direct and supervise the election, subject to the National Labor Relations Board Rules and Regulations. Eligible to vote are those in the unit who were employed during the

2d 781, as explained in *Black River Electric Coop. v. (not legible) Service Commission*, 238 S. C. 232, 120 S. E. 2d 6, 12; *Hagans v. Excelsior Electric Membership Corp.*, 207 Ga. 53, 60 S. E. 2d 162; *Alabama Power Co. v. Cullman County Electric Membership Corp.*, 234 Ala. 396, 174 So. 866.

¹⁰ Tennessee Code, title 48, ch. 1, sec. 1, et seq.

payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.¹¹ Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local Union No. 102.

Dated, Washington, D. C. Oct. 6, 1967.

Frank W. McCulloch, Chairman
 John H. Fanning, Member
 Gerald A. Brown, Member
 Howard Jenkins, Jr., Member
 National Labor Relations Board

(Seal)

¹¹ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. Excelsior Underwear Inc., 156 NLRB 1236.

MOTION FOR FURTHER HEARING**(Case No. 10-RC-7070)**

Comes now the alleged employer, The Natural Gas Utility District of Hawkins County, Tennessee, and moves, as provided in the National Labor Relations Board Rules and Regulations, Series 8, Section 102.67 (j), for further hearing.

The Decision and Direction of Election of the National Labor Relations Board, dated October 6, 1967, is erroneous in that it affirms the Hearing Officer's ruling that the Board may assert jurisdiction. It is submitted the Utility District under Section 2(2) of the National Labor Relations Act, as amended, is a political subdivision of the State of Tennessee and is specifically exempt. This ruling has broad effect, there being numerous utility districts in this state.

Accordingly, motion is hereby made for further hearing on this entire jurisdictional matter, and that the order directing election be suspended until this motion is disposed of.

(s) Eugene Greener, Jr.
22 South Second Street
Memphis, Tennessee

(s) J. O. Phillips, Jr.
Citizens Union Bank Building
Rogersville, Tennessee
Attorneys for The Natural Gas
Utility District of Hawkins
County, Tennessee

ORDER DENYING MOTION**(Case No. 10-RC-7070)**

On October 6, 1967, the National Labor Relations Board, asserting jurisdiction in the above-entitled case, issued a Decision and Direction of Election¹ herein.

Thereafter, on October 19, 1967, the Employer filed with the Board a motion for further hearing on the jurisdictional issue, contending that it is a political subdivision of the State of Tennessee and, under Section 2(2) of the National Labor Relations Act, is specifically exempt from the Board's jurisdiction.

The Board having duly considered the matter,

It Is Hereby Ordered that the Employer's motion be, and it hereby is, denied as lacking in merit.

Dated, Washington, D. C., October 24, 1967.

By direction of the Board:

George A. Leet
Associate Executive Secretary

Form NLRB-4279
(2-66)

RC-RM-RD

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

TYPE OF ELECTION

(Check one)

- ☐ Consent Agreement
☐ Stipulation
☒ Board Direction
☐ RD Direction

*(Also check box
below where
appropriate)*

☐ 8(b) (7)

Case No. 10-RC-7070

THE NATURAL GAS UTILITY DISTRICT OF
HAWKINS COUNTY, TENNESSEE, EMPLOYER

and

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AMERICA FEDERATION
OF LABOR, LOCAL No. 102, PETITIONER

CERTIFICATION OF REPRESENTATIVE

An election having been conducted in the above matter under the supervision of the Regional Director of the National Labor Relations Board in accordance with the Rules and Regulations of the Board; and it appearing from the Tally of Ballots that a collective bargaining representative has been selected; and no objections having been filed to the Tally of Ballots furnished to the parties, or to the conduct of the election, within the time provided therefor;

Pursuant to authority vested in the undersigned by the National Labor Relations Board, IT IS HEREBY CERTIFIED that United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102 has been designated and selected

by a majority of the employees of the above-named Employer, in the unit described below, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

UNIT: All pipe fitters employed at the Employer's Rogersville, Tennessee, operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards, and supervisors as defined in the Act.

Signed at Atlanta, Georgia on the 6th day of November, 1967.

On behalf of

NATIONAL LABOR RELATIONS
BOARD

/s/ Walter C. Phillips
Regional Director, Region 10
National Labor Relations Board

[NLRB SEAL]

J. O. Phillips, Jr.
Attorney
Citizens Union Bank Building
Rogersville, Tennessee 37857

Allen M. Elliott
Attorney
Suite 1408
Bank of Knoxville Building
Knoxville, Tennessee 37902

The Natural Gas Utility District
of Hawkins County, Tennessee
203 South Depot
Rogersville, Tennessee 37857

United Association of Journey-
men and Apprentices of the
Plumbing and Pipe Fitting In-
dustry of the United States and
Canada, American Federation
of Labor, Local No. 102
1216 Broadway, N. E.
Knoxville, Tennessee 37917

William S. Pierce
Regional Director
Federal Mediation and
Consiliation Service
154 Peachtree-Seventh Building
Atlanta, Georgia 30323

Form NLRB-501
(2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Instructions: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring

Do Not Write in
This Space

Case No.
10-CA-7213

Date Filed
1-10-68

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT
 - a. Name of Employer
The Natural Gas Utility District of Hawkins County,
Tennessee
 - b. Number of Workers Employed
9
 - c. Address of Establishment (Street and number, city,
State, and ZIP code)
520 W. Main Street
Rogersville, Tennessee 37857
 - d. Employer Representative to Contact
Ernest P. West, Jr.
 - e. Phone No.
456-8841
 - f. Type of Establishment (Factory, mine, wholesaler,
etc.)
Wholesale & retail distributor of appliances and
natural gas
 - g. Identify Principal Product or Service
Distribution of natural gas

- h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 5 (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-mentioned Employer has since Dec. 4, 1967, refused to bargain with the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local #102, the recognized bargaining agent of the Employees of its members, but by letter from the employers attorney, the Hon. J. O. Phillips, Jr., dated Dec. 7, 1967, has informed the Union that a Resolution has been passed by the members of the Board of the Employer, directing the employer not to bargain with this Union.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the right guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)

United Assn. of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102

- 4a. Address (Street and number, city, State, and ZIP code)

1218 Broadway, N.E., Knoxville, Tennessee

- 4b. Telephone No.
524-5806

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Allen M. Elliott Attorney for Local Union 102
(signature of (Title, if any)
representative or
person filing charge)

Address 1516 Bank of Knoxville Bldg.
Knoxville, Tenn. 37902
524-7456
(Telephone number)

Jan. 8, 1968
(Date)

Willfully False Statements on This Charge Can Be Punished By Fine and Imprisonment (U.S. Code, Title 18, Section 1001)

COMPLAINT AND NOTICE OF HEARING**(Case No. 10-CA-7213)**

It having been charged by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102, herein called the Union, that The Natural Gas Utility District of Hawkins County, Tennessee, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Tenth Region, issues this Complaint and Notice of Hearing pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1.

A copy of the charge, filed on January 10, 1968, was served upon Respondent by registered mail on January 11, 1968.

2.

Respondent is, and has been at all times material herein, incorporated under the provisions of the Tennessee Utility District Act and maintains its principal office and place of business at Rogersville, Tennessee, where it is engaged in the sale and distribution of natural gas to residential houses, commercial businesses, and industrial firms located in Hawkins County, Tennessee.

3.

Respondent, during the past calendar year, which period is representative of all times material herein, in the course and conduct of its business operations purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Tennessee. During the same period Respondent received gross revenue in excess of \$250,000.

4.

Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6.

All pipe fitters employed at the Respondent's Rogersville, Tennessee, operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7.

On October 27, 1967, in an election by secret ballot conducted under the supervision of the Regional Director for the Tenth Region of the Board, a majority of the employees in the unit described in paragraph 6 above, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

8.

On November 6, 1967, the Regional Director for the Tenth Region of the Board certified the Union as the exclusive collective bargaining representative of all the employees in the unit described in paragraph 6 above.

9.

At all times since November 6, 1967, the Union has been, and is, the representative of a majority of the employees in the unit described in paragraph 6 above, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, by virtue of Section 9(a) of

the Act, has been, and is, the exclusive representative of all the employees in said unit for the purposes of collective bargaining.

10.

On or about December 4, 1967, and at all times thereafter, the Union requested Respondent to bargain collectively with the Union as the exclusive representative of all employees in the aforesaid unit with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

11.

On or about December 7, 1967, and at all times thereafter, Respondent refused, and has continued to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described in paragraph 6 above.

12.

The acts of Respondent alleged in paragraph 11 above constitute unfair labor practices affecting commerce within the meaning of Section 8(a) (5) and (1) and Section 2(6) and (7) of the Act.

Please Take Notice that on the 26th day of March, 1968, at 10:00 a.m., (Eastern Standard Time), in the Hawkins County Courthouse, Rogersville, Tennessee, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases as Taken from the Board's Published Rules and Regulations and Statements of Procedure, is attached.

You Are Further Notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an

answer to said complaint within 10 days from the service thereof and that unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Atlanta, Georgia, this 1st day of February, 1968.

(s) Walter C. Phillips
Regional Director, Region 10
National Labor Relations Board
Room 701, 730 Peachtree Street, N.E.
Atlanta, Georgia 30308

ANSWER OF THE NATURAL GAS UTILITY DISTRICT OF
HAWKINS COUNTY, TENNESSEE

(Case No. 10-CA-7213)

Comes now The Natural Gas Utility District of Hawkins County, Tennessee and answers the Complaint filed herein against it as follows:

It denies that it has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., but, rather, it alleges that it is exempt from said Act for it is not an "employer" as defined therein, but is a political subdivision of the State of Tennessee.

It admits ¶ 1.

It admits ¶ 2 insofar as it goes but alleges that said paragraph is incomplete and inadequately outlines both its present functions and fails to include its possible additional functions such as providing water, fire, police services, etc.

It admits ¶ 3.

It denies ¶ 4 for the reason stated above; namely, that it is exempt from the National Labor Relations Act, as amended, since it is not an "employer" as defined therein.

It admits ¶ 5.

It denies ¶ 6 because whether there is an appropriate unit is irrelevant and inapplicable.

It admits the election and the result of same as set out in ¶ 7 but it denies that the Union is the bargaining representative of its employees or that it is required to bargain with the Union since it is exempt from the National Labor Relations Act, as amended, as pointed out above.

It admits that the regional director certified the Union as outlined in ¶ 8, as the exclusive bargaining representative but it denies that this action has any legal effect since it is exempt for the reason above set out.

It denies ¶ 9, 10 and 11 as far as it states or infers it has any duty to bargain with the Union, or that the Union is the representative of its employees under the provisions of the Act because respondent is exempt and not governed by the provisions of the Act.

It admits the Union requested that it bargained with it and that it refused to do so and continues to refuse to do so because it is not covered by the Act and it is exempt therefrom.

It denies ¶ 12.

Wherefore, Respondent Prays the Complaint filed herein against it be dismissed.

Buchignani & Greener

By (s) Eugene Greener, Jr.

(s) J. O. Phillips, Jr.

Attorneys for the Natural Gas
Utility District of Hawkins
County, Tennessee

Dated this 6th day of February, 1968.

PROPOSED STIPULATION OF FACT ON BEHALF OF THE
NATURAL GAS UTILITY DISTRICT OF
HAWKINS COUNTY, TENNESSEE

(Case No. 10-CA-7213)

The respondent, The Natural Gas Utility District of Hawkins County, Tennessee, proposes the following stipulation of fact:

(A) History and Background

Hawkins County, one of the 95 counties in Tennessee, contains an area of 480 square miles, and on and prior to December 16, 1957, it was largely a rural area, made up of a number of small farms. The population according to the 1960 census was 30,468.

In the year 1957, and for some time prior thereto, the price structure for agricultural products was such that a reasonable living could not be made upon most of the small farms within Hawkins County. Burley tobacco allotments were steadily being decreased, and this deprived farmers of a considerable portion of their one good "cash crop." Only fully mechanized, large farms could be operated at a fair profit which would support an average family of four. The result of this situation was that, at this time, the youth of the County were leaving the county just as soon as they finished high school or college, as there was no hope of employment for them at home. In order to prevent a sharp decline in population, and in order to maintain sufficient tax revenues to keep local governmental services (especially education) in line with prevailing standards, it became apparent that the County must obtain some industrial plants.

When industries were contacted, it was found that in most instances new factories will not be located in areas where natural gas is unavailable. An extensive effort was made to have this commodity distributed within the County by everyone possible, including a retailer operating in an adjoining county. Due to the financial problems involved, no one would undertake this. Also, none of the small towns of the County acting alone could be interested in

undertaking this function. So it was that, under the direction of the Hawkins County Chamber of Commerce, and with some assistance from the communities of Rogersville, Surgoinsville and Pressman's Home, and because it was learned that the Town of Oak Ridge, Tennessee had obtained natural gas in this same manner, The Natural Gas Utility District of Hawkins County, Tennessee was organized, under the provisions of The Utility District Act of 1937. This is only one of nearly 270 such utility districts in Tennessee, some of which provide each of the various services authorized by the Law (such as fire protection, police, water, sewerage disposal, etc.); some districts provide more than one of the foregoing services.

Although the Hawkins County Utility District was organized in 1957, it was not until 1962 that the District was able to obtain the necessary financing. In the interim, various sources were tried, including various U. S. Governmental agencies. In 1962, the firm of Hugo Marx & Co., of Birmingham, Ala. contracted to buy and re-sell the District's revenue bonds in the total amount of \$1,950,000, and did so buy and re-sell them.

Attached are the trust agreements dated May 9, 1962, Exhibit 1, between the District and the Birmingham Bank covering the outstanding bonds. The District is repeatedly referred to therein as "the Municipality." As long as bonds are outstanding, the flow of and use of its revenue is completely controlled by this agreement.

With the proceeds, the District did construct a natural gas distribution system, extending from Rogersville, north-erly to Pressmen's Home (12 miles), and from Rogersville easterly to a point near the Sullivan County line (26 miles), the latter serving the communities of Surgoinsville, Church Hill and Mt. Carmel. Rural homes located in reasonable close proximity to the distribution lines are served throughout the County. The District now serves a total of approximately 975 residences, of which at least one-half would be considered as being rural homes.

Since the formation of the Utility District, and its commencing operations, the following industrial plants have been located within the County:

Kingsport Press	Approximate cost	\$20,000,000	Employees 350
Holliston Mills (2)	Approximate cost	\$30,000,000	Employees 510
Alladin Plastics	Approximate cost	\$ 2,000,000	Employees 90

All of these plants are served by the Utility District, and none of them would have been located within the County, had natural gas not been available for them.

The Utility District acting for the benefit of the community provides natural gas to heat the County Court house, to heat the Hawkins County Memorial Hospital, to heat homes within a Federal Low Rent Housing Project, to heat the National Guard Armory, located in the eastern end of the County, and has entered into an informal contract with Holston Army Ammunition Plant to provide gas for the boilers used at that installation.

(B) Formation of the District

The enabling legislation for formation of utility districts, such as the one here involved and of which there are many in Tennessee was passed by the Tennessee State Legislature as the Act of 1937 and has subsequently been amended on several occasions. A copy of the amended act is attached as Exhibit 2.

The purpose of this legislation was to provide a municipal corporate arrangement to furnish certain needed services, usually in small towns and rural areas, including, but not limited to, the furnishing of water, sewer, sewerage disposal, fire protection, police protection, natural gas, etc. which services were not otherwise provided. The district when formed was given an exclusive franchise to provide one or more of the foregoing services.

Section 6-2602 T.C.A. provides that a petition for the incorporation of a utility district may be submitted to the county judge or the county court of any county in which the proposed district is situated; the petition should be signed by not less than twenty-five (25) owners of real property, residing within the boundaries of the district, and said petition should include a statement of the necessity for the service or services, the proposed corporate name and boundaries, an estimate of the cost of acquisi-

tion or construction of the facilities, and the nomination of three residents for appointment as commissioners.

It was under this provision in the County Court of Hawkins County, Tennessee, on December 16, 1957, that the order was entered for the creation of The Natural Gas Utility District of Hawkins County, Tennessee, by the Honorable John K. Williams, Chairman of the County Court, he having been elected by the public.

A copy of the petition and the order are attached, as Exhibits 3 and 4, after the filing of the petition and the holding of the hearing on December 16, 1957, after due notice, the Hawkins County judge determined (a) that the public convenience and necessity required the creation of the District, and (b) that the creation of the District was economically sound and desirable. Thereafter, he appointed the original commissioners.

(C) The Commissioners, Their Terms and Compensation

The three original commissioners were appointed by the Chairman of the County Court of Hawkins County, an elected public official. They were:

George O. Baker
Robert S. Lane
Lance W. Rogan

Mr. Baker was the Director of the Technical Trade School for the International Printing Pressmen & Assistant's Union at Pressmen's Home. Mr. Lane is a banker, Mr. Rogan is an automobile dealer.

Mr. Baker later resigned as Commissioner, and by vote of the two remaining commissioners was replaced by Mr. Howard Sullivan (then Director of the Technical Trade School for I.P.P. & A. U. of N.A.).

Mr. Sullivan was moved to Washington, D.C. He then resigned, and was, by vote of the remaining commissioners, replaced by Byron D. Rogers, the owner of a hardware store at Church Hill.

The present commissioners are:

Lance W. Rogan, Chairman
Robert S. Lane, Secy-Treas.
Byron D. Rogers

None of these men derives any direct financial gain from the affairs of the District. They serve at a personal loss, and from a sense of civic responsibility, their only compensation being \$25 per day subject to an annual maximum of \$300—they are also reimbursed for their expenses.

Further, Section 6-2614 T.C.A. provides that the remaining Commissioners fill any vacancies but in the event the remaining Commissioners cannot agree on a successor, the County Judge (an elected official) will appoint same.

(D) Powers and Attributes of District

Of special significance is the following which is a direct quotation from the statute 6-2607 T.C.A.:

"District as Municipality—Powers. From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a 'municipality' or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commissioners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district and no other person, firm, or corporation shall furnish or attempt to furnish any of the said services in the area embraced by the district, unless and until it shall have been established that the public convenience and necessity requires other or additional services." (Emphasis added.)

Further, Section 6-2608 T.C.A. gives to a district the power to operate utilities and "to carry out such purposes it shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, within

or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter."

Further, Section 6-2610 T.C.A. outlines various other powers of a utility district, including, but not limited to:

- (a) The power to sue and be sued;
- (b) The power to acquire by various methods, hold and dispose of real and personal property;
- (c) The power to make and enter into contracts, conveyances, etc.;
- (d) The power to incur debts;
- (e) The power to borrow money;
- (f) The power to fix, maintain, collect and revise rates and charges;
- (h) The power to pledge all or part of its revenues;
- (i) And various other powers, including specifically the right of eminent domain, with same even extending to other public agencies. Respondent's regular station sites were only obtained after threat of eminent domain proceedings.

Section 6-2613 T.C.A. specifically exempts a district from state regulation, either by the Railroad & Public Utilities Commission or any other board or commission of like character. It should be pointed out that private utilities are specifically subject to such regulation.

Section 6-2615 T.C.A. provides as follows:

"The secretary shall keep a record of all proceedings of the commission which shall be available for inspection as *other public records* and shall be custodian of all official records of the district." (Emphasis added.)

The terms of the board of commissioners and their powers as commissioners are set forth, including the power to subpoena witnesses and to administer oaths. They are much like a board of mayor and aldermen of a town, a legislative body.

Section 6-2617 T.C.A. requires the publication of the annual financial statement of the district in a newspaper of general circulation, published in the county in which the district is situated, showing the financial condition of the district at the end of the year and the earnings of the district during the year just ended and the rates then being charged. A procedure for protesting rates is established in 6-2618 T.C.A.

Section 6-2619 T.C.A. authorizes the issuance of revenue bonds. The bonds will be issued for periods not exceeding forty years, at rates of interest not exceeding 6% per annum, payable semiannually; said bonds will be fully negotiable.

Section 6-2626 T.C.A. provides that "So long as a district shall have the right to compel the levy of any tax to pay the bonds or the interest thereon and that the same are payable solely from revenue.

Section 6-26256 T.C.A. provides that "So long as a district shall own any system, the property and revenue of such system shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to this chapter and the income therefrom shall be exempt from all state, county, and municipal taxation . . ."

In addition to the property and revenue of a utility district being exempt from state, county and municipal taxation, and the bonds issued and the income therefrom so exempt, utility districts on their purchases pay no state sales tax and obtain exemption certificates, as do other municipalities and political subdivisions of the state; and they may arrange to pay no state gasoline tax on the same basis. And "governmental service" vehicle license tags are obtained and used by respondent on its vehicles.

Further, the interest income on their bonds to the bondholder is free from federal income tax.

There is no provision whatever in the Utility District Act, which permits any distribution of profits to customers or subscribers. There are no stockholders to receive dividends. Since the District is a "municipality", as defined by the statute, there could be no "profits" as such from its operation, nor could there ever be any distribution of "earnings" or of "surplus funds." Under section

6-2625, the rates to be charged shall be such as shall reasonably pay operational expenses, and to pay bonds and interest. If and when the District should ever be able to retire its bonded indebtedness, the District's customers could then expect a reduction in rates.

(E) Other Applicable Statutes

No provision is made for unemployment compensation covering the employees of a district since it is a political subdivision of the state.

And furthermore, the only reason the employees are covered by social security is because under Federal statute, 42 USCA 418, and Tennessee statute 8-3811 T.C.A., provision is made for a voluntary agreement between the Secretary of Health, Education and Welfare and certain governmental entities to cover its employees. This voluntary coverage is available for employees of a state or political subdivision thereof. The respondent by resolution dated January 19, 1965, extended such coverage to its employees.

Certain other Tennessee statutes should be referred to because they characterize a utility district as a municipality and/or an instrumentality of the State of Tennessee.

In that regard, Section 6-318 T.C.A. entitled "Municipal Property and Services," reads in part as follows:

"Upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality *and any affected instrumentality of the state of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public service district*, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances . . ." (Emphasis added.)

Further, Section 6-604 T.C.A. in the Municipal Corporations section provides that a county, utility district, mu-

nicipality or other agency conducting any utility service may extend the same beyond its boundaries. A utility district is thus characterized and given the same authority as a county, a municipality or other public agency.

Further, Section 9-1202 T.C.A. dealing with revenue bond refinancing, subsection (a) provides as follows:

"The term 'municipality' shall mean any county, city, town, township, utility, utility district, and sanitary district of this state."

The proposed stipulation is respectfully submitted this 8th day of February, 1968, on behalf of The Natural Gas Utility District of Hawkins County, Tennessee.

BUCHIGNANI & GREENER

By: _____

Eugene Greener, Jr.
104 DuPont Bldg.
Memphis, Tennessee

J. O. Phillips, Jr.
Citizens Union Bank Bldg.
Rogersville, Tennessee
Attorneys for the Natural Gas
Utility District of Hawkins
County, Tennessee

MOTION FOR SUMMARY JUDGMENT**(Case No. 10-CA-7213)**

Comes Now Counsel for the General Counsel and respectfully moves the National Labor Relations Board for summary judgment in the above-styled case, and in support thereof shows as follows:

1.

Upon a charge filed January 10, 1968, the Regional Director of the Tenth Region of the Board on February 1, 1968, issued a Complaint and Notice of Hearing in the above-styled case. Copies of said charge and Complaint and Notice of Hearing were duly served on the parties to this proceeding.

2.

Respondent, by Counsel, filed with the Regional Director of the Tenth Region an Answer to said Complaint on February 6, 1968, and served copies thereof on the parties herein.

3.

Respondent, by its Answer, admits paragraphs 1, 3 and 5 of the Complaint.

4.

Paragraph 2 of the Complaint alleges that Respondent is, and has been at all times material herein, incorporated under the provisions of the Tennessee Utility District Act and maintains its principal office and place of business at Rogersville, Tennessee, where it is engaged in the sale and distribution of natural gas to residential houses, commercial businesses, and industrial firms located in Hawkins County, Tennessee.

Respondent, by its Answer, admits the above allegation but contends that it inadequately outlines both Respondent's present functions and fails to include its possible additional functions such as providing water, fire, police services, etc.

In support of this allegation of the Complaint, Counsel for the General Counsel respectfully requests that the

Board take official notice of its Decision and Direction of Election in Case No. 10-RC-7070 dated October 6, 1967, and reported at 167 NLRB No. 100.

5.

Paragraph 4 of the Complaint alleges that Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Respondent denies this allegation and asserts that it is not an "employer" as defined in the Act.

In support of this allegation of the Complaint, Counsel for the General Counsel respectfully requests that the Board take official notice of its Decision and Direction of Election dated October 6, 1967, Respondent's Motion for Further Hearing, filed on October 19, 1967, and the Board's Order Denying Motion, dated October 24, 1967 in Case No. 10-RC-7070.

6.

Paragraph 6 of the Complaint alleges that all pipe fitters employed at the Respondent's Rogersville, Tennessee operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Respondent denies this allegation as being irrelevant and inapplicable.

In support of this allegation of the Complaint, Counsel for the General Counsel respectfully requests that the Board take official notice of its aforesaid Decision and Direction of Election in Case No. 10-RC-7070.

7.

Paragraph 7 of the Complaint alleges that on October 27, 1967, in an election by secret ballot conducted under the supervision of the Regional Director for the Tenth Region of the Board, a majority of the employees described in paragraph 6 of the Complaint, designated and selected the Union as their representative for the purposes of collective bargaining with Respondent with respect to rates

of pay, wages, hours of employment and other terms and conditions of employment. Respondent admits the results of the election as alleged, but denies that the Union is the bargaining representative of its employees with which it is required to bargain.

In support of this allegation of the Complaint, Counsel for the General Counsel respectfully requests that the Board take official notice of the Certification of Representative in Case No. 10-RC-7070 dated November 6, 1967.

8.

Paragraph 8 of the Complaint alleges that on November 6, 1967, the Regional Director for the Tenth Region of the Board certified the Union as the exclusive collective bargaining representative of all the employees in the unit described in paragraph 6 of the Complaint. Paragraph 9 of the Complaint alleges that at all times since November 6, 1967, the Union has been, and is, the representative of a majority of the employees described in paragraph 6 of the Complaint, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of all the employees in said unit for the purposes of collective bargaining. Respondent admits the certification of the Union, but asserts that it is exempt from any duty to bargain because it is exempt from the provisions of the Act.

In support of these allegations, Counsel for the General Counsel respectfully requests the Board to take official notice of the Certification of Representative in Case No. 10-RC-7070 issued on November 6, 1967 (copies of which were duly served on the parties herein).

9.

Paragraph 10 of the Complaint alleges that on or about December 4, 1967, and at all times thereafter, the Union requested Respondent to bargain collectively with the Union as the exclusive representative of all employees in the aforesaid unit with respect to rates of pay, wages,

hours of employment and other terms and conditions of employment.

In support of this allegation of the Complaint, Counsel for the General Counsel shows that Respondent, by its Answer, admits the Union requested that Respondent bargain with the Union and that the Union, by letter dated December 4, 1967, requested Respondent to bargain collectively. A copy of the letter (but not of the 8-page proposed working agreement attached to the original letter sent to the Respondent) is attached hereto as Exhibit 1.

10.

Paragraph 11 of the Complaint alleges that on or about December 7, 1967, and at all times thereafter, Respondent refused, and has continued to refuse, to bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described in paragraph 6 of the Complaint.

In support of this allegation of the Complaint, Counsel for the General Counsel shows that Respondent, by its Answer, admits that it refused to bargain with the Union and continues to refuse to do so, and that Respondent, by letter dated December 7, 1967, refused to bargain with the Union. A copy of Respondent's letter dated December 7, 1967, is attached hereto as Exhibit 2.

11.

Paragraph 12 of the Complaint alleges that the acts of Respondent in paragraph 11 of the Complaint constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. In support of this allegation Counsel for the General Counsel shows as follows:

Pursuant to a petition filed on April 4, 1967, in Case No. 10-RC-7070, a hearing was held before a Hearing Officer of the Board on June 19, 1967. The Hearing Officer, by direction of the Regional Director for the Tenth Region, signed an order transferring the case to the Board. The Respondent denied the Board's jurisdiction, contending that it was, and is, an exempt political sub-

division of the State of Tennessee. On October 6, 1967, the Board issued its Decision and Direction of Election in which jurisdiction was asserted. See 167 NLRB No. 100. On October 19, 1967, the Respondent filed with the Board a motion for further hearing on the jurisdictional issue. The Board, having duly considered the matter, denied the motion in an Order Denying Motion on October 24, 1967.

On October 27, 1967, pursuant to the Board's Decision and Direction of Election, an election by secret ballot was conducted resulting in a majority of the valid votes cast being for the Union. Whereupon, no objections having been filed to the conduct of the election, the Regional Director for the Tenth Region of the Board, on behalf of the Board, issued a Certification of Representative in Case No. 10-RC-7070 on November 6, 1967.

Following this certification as the exclusive bargaining representative of Respondent's employees in an appropriate unit, the Union, by letter dated December 4, 1967, requested Respondent to bargain collectively (See Exhibit 1). Respondent, by letter dated December 7, 1967, refused to bargain collectively with the Union (See Exhibit 2). Respondent, by its Answer, admits that the Union requested Respondent to bargain and that Respondent refused and continues to refuse to do so. Respondent's refusal to bargain with the Union is predicated solely on its denial of the Board's jurisdiction. Its denials of specific allegations in the Complaint are based on allegations that it is exempt from the Act, alleging that it is not an "employer" as defined in the Act, but a political subdivision of the State of Tennessee. Respondent denies any legal effect of the Board-conducted election or the Certification of Representative based thereon.

The Respondent is attempting to relitigate the issues raised in the representation proceedings. (Case No. 10-RC-7070). Counsel for the General Counsel submits that in the absence of newly discovered or previously unavailable evidence (not herein contended by Respondent) issues that were or could have been raised in the related representation proceedings may not be relitigated in an unfair labor practice proceeding. See Pittsburgh Plate

Glass Company v. NLRB, 313 U. S. 146; The Sheffield Corporation, 163 NLRB No. 34, and State Farm Mutual Automobile Insurance Company, 163 NLRB No. 94. Moreover, Section 102.67(f) of the Board's Rules and Regulations, Series 8, as amended, expressly precludes such relitigation.

Wherefore, Counsel for the General Counsel submits that there are no issues of fact or law requiring a hearing, and prays that the Board issue an Order that cause, if any there be, be shown why a Decision should not be issued finding the violations as alleged in the Complaint, and that such Decision be issued thereafter.

Dated at Atlanta, Georgia, this 13th day of February, 1968.

(s) Gerald S. Kiel
Counsel for the General Counsel

EXHIBIT I

**[LETTERHEAD OF UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY—
LOCAL UNION No. 102]**

Knoxville, Tennessee 37917
December 4, 1967

Mr. Ernest P. West, Jr.
Natural Gas Utility District
of Hawkins County
Rogersville, Tennessee.

Dear Sir:

I am enclosing herewith one (1) copy of the proposed working agreement for the Pipefitters working for the Natural Gas Utility District of Hawkins County, Rogersville, Tennessee.

If it is agreeable with you, I would like to have a meeting with you on Tuesday, December 12, 1967 at 2:00 P. M. there in your office in Rogersville. Please advise by return mail if you can meet with me on this date.

With best wishes I am,

Respectfully yours,

(s) H. G. Graham
Business Agent
Local No. 102

HGG:er
opeiu
#144
afi-cio
enc.

EXHIBIT II

[LETTERHEAD OF PHILLIPS & HALE]

Attorneys and Counsellors
Rogersville, Tennessee 37857

December 7, 1967

Mr. H. G. Graham
Business Agent, Local No. 102
United Association of Journeymen and
Apprentices of the Plumbing & Pipe
Fitting Industry
1216 Broadway, N. E.
Knoxville, Tennessee 37917

Dear Mr. Graham:

I have been asked to reply to your letter of December 4 to Mr. Ernest P. West, Jr., concerning a conference relating to a proposed contract between your Union and The Natural Gas Utility District of Hawkins County, Tennessee.

You will recall the discussion between you, Mr. Allen Elliott and I on the day of the representation election, in which I advised you of the possibility that the Utility District might seek an adjudication from the Sixth U. S. Circuit Court of Appeals, concerning its alleged exemption from the provisions of the Fair Labor Standards Act. As we understand it, the only way by which the matter can be presented to that court will be the result of the District's failure to enter into contract negotiations with your Union.

The Board of Commissioners of the Utility District passed a resolution directing that such adjudication be obtained, it still being their earnest contention that the Utility District is a political subdivision or municipality, within the meaning of the Fair Labor Standards Act. Accordingly, we are not at this time in position to enter into negotiations. I hope you will understand the spirit in which this letter is written. We wish that it were possible

to simply appeal from the ruling of NLRB, but such does not appear to be the case.

Yours very truly,

(s) J. O. Phillips, Jr.

JOPjr:mc

cc: Mr. Allen Elliott, Attorney

Mr. Lance Rogan

Mr. Robert S. Lane

Mr. Byron D. Rogers

Mr. Robert D. Bradley

Mr. L. E. Hoffmann

Mr. Ernest P. West, Jr.

Mr. V. Hugo Marx, Jr.

**ORDER TRANSFERRING PROCEEDING TO THE BOARD AND
NOTICE TO SHOW CAUSE**

(Case No. 10-CA-7213)

On February 1, 1968, the Regional Director for Region 10 of the National Labor Relations Board issued a Complaint and Notice of Hearing in the above-entitled proceeding, alleging that the Respondent has engaged in, and is engaging in, certain acts which constitute unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. Subsequently, the Respondent filed its answer, admitting in part, and denying in part, the allegations of the complaint, and requesting that the complaint be dismissed.

Thereafter, on February 16, 1968, the General Counsel filed with the Board in Washington, D. C., a Motion for Summary Judgment, in requesting that the Board take official notice of certain documents in Case No. 10-RC-7070. The General Counsel submits that the Respondent is attempting to relitigate issues which were raised and decided in Case No. 10-RC-7070, and that, therefore, there are no issues of fact or law requiring a hearing in the instant case. He requests "that the Board issue an Order

that cause, if any there be, be shown why a Decision should not be issued finding the violations as alleged in the Complaint, and that such Decision be issued thereafter."

The Board having duly considered the matter,

It Is Hereby Ordered that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board.

Notice Is Hereby Given that cause be shown, in writing, filed with the Board in Washington, D. C., on or before March 5, 1968, (with affidavit of due service of copies upon the parties to this proceeding), why the General Counsel's Motion for Summary Judgment should not be granted.

Dated, Washington, D. C., February 19, 1968.

By direction of the Board:

(s) George A. Leet
Associate Executive Secretary

RESPONSE TO NOTICE TO SHOW CAUSE

(Case No. 10-CA-7213)

Comes now the Respondent, The Natural Gas Utility District of Hawkins County, Tennessee, and in response to the Notice to Show Cause why the Motion for Summary Judgment should not be granted shows as follows:

I.

It questions the jurisdiction of this Board.

It is basic Horn Book Law that jurisdiction may be raised at any time in any proceeding.

The foregoing basic rule has been repeatedly stated by courts at all levels including the U. S. Supreme Court, *Gutierrez v. Waterman Steamship Corp.*, 373 U. S. 206, 209, (1962) citing numerous cases; *Matson Navigation Co. v. United States*, 284 U.S. 352, 359 (1931) citing many cases; *Morris v. Gilmer*, 129 U.S. 315, 327 (1888)—the Court on its own motion will consider whether or not there is jurisdiction. And as the United States Supreme Court said in *Cardillo v. Liberty Mutual Co.*, 330 U.S. 469, 473:

“But in reviewing an administrative order, it is ordinarily preferable where the issue is raised and where the record permits an adjudication, for a federal court first to satisfy itself that the administrative agency or officer had jurisdiction over the matter in dispute.”

It is, therefore, respectfully submitted that the cases cited in the Motion for Summary Judgment and the rule of the Board referred to against relitigation do not, in fact cannot, prevent a determination of lack of jurisdiction.

II.

It is not an “employer” as defined in section 2(2) of the National Labor Relations Act, but it is a political subdivision of the State of Tennessee. Further, the complaint filed by the Regional Director for Region 10, herein does not allege that Respondent is such an “employer”.

III.

In support of this Response, there are attached hereto the following: (a) the affidavit of Eugene Greener, Jr. with Exhibit 1 to same being the conflicting decision of Region 2^e of the Board rendered on September 1, 1967 that another Utility District is not an "employer" but is a political subdivision of Tennessee, and (b) affidavit of James O. Phillips, Jr., both affiants being members of the Tennessee Bar and (c) Points and Authorities on behalf of Respondent's position.

Respondent respectfully asks this Tribunal to reconsider the basic question of whether or not it has jurisdiction.

Respectfully submitted this 26th day of February, 1968.

The Natural Gas Utility District
of Hawkins County, Tennessee

By (s) Eugene Greener
Buchignanni & Greener
104 DuPont Building
22 S. 2nd Street
Memphis, Tennessee

(s) J. V. Phillips
Phillips & Hale
Citizens Union Bank Building
Rogersville, Tennessee

State of Tennessee)
County of Shelby)

I, Eugene Greener, Jr., first being duly sworn make oath that copies of this Response have been this day mailed by regular United States mail with postage prepaid to the following:

1. Mr. Allen M. Elliott, Attorney
1516 Bank of Knoxville Building
Knoxville, Tennessee 37902
2. United Association of Journeymen and Apprentices
of the Plumbing and Pipe Fitting Industry of
the United States and Canada, American Federation
of Labor, Local No. 102
1218 Broadway, N. E.
Knoxville, Tennessee 37902
3. Mr. Walter C. Phillips
Regional Director
National Labor Relations Board
Region 10
Room 701, 730 Peachtree St. N. E.
Atlanta, Georgia 30308

(s) Eugene Greener, Jr.

Sworn to and subscribed before me this 26th day of
February, 1968.

My commission expires: 4-15-71.

(s) (Not Legible)
Notary Public

AFFIDAVIT OF EUGENE GREENER, JR.

State of Tennessee)
County of Shelby)

Comes Eugene Greener, Jr., and makes oath in due form of law as follows:

Affiant is 46 years of age, a resident of Memphis, Tennessee, and has been a member of the Tennessee Bar since 1948. He is presently and has been for a number of years a member of the Memphis law firm of Buchignani & Greener; he is quite familiar with the organizational set up and method of operation of a utility district in Tennessee, as authorized by the Utility District Law of 1937, duly passed by the Tennessee State Legislature and duly effective since 1937.

That Affiant has been involved in at least four litigated cases involving Utility Districts, including one NLRB Case other than the one herein involved, which litigated matters required a thorough examination of the method of establishment, the powers and responsibilities of such a utility district; that in case No. 26RC 2972 in which Affiant was counsel before the National Labor Relations Board (Regional Director, Region 26) on behalf of the West Tennessee Public Utility District of Weakly, Carroll and Benton Counties, Tennessee, by Decision and Order entered on September 1, 1967, it was held that the utility district in question was not an "employer" within the meaning of the Act, but was a political subdivision of the State of Tennessee. The facts in that case and the one at bar are substantially identical. A copy of that Decision and Order is attached hereto as Exhibit 1 to this affidavit.

Affiant would further show that Hawkins County is one of the 95 counties in Tennessee and that The Natural Gas Utility District of Hawkins County, Tennessee is only one of nearly 270 such utility districts in Tennessee, each of which provides one of the various services authorized by the law (such as fire protection, police, water, sewerage disposal, etc.); some districts provide more than one of the foregoing services.

(A) Formation of the District

The enabling legislation for formation of utility districts, such as the one here involved and of which there are nearly 270 in Tennessee was passed by the Tennessee State Legislature as the Act of 1937 and has subsequently been amended on several occasions. A copy of the amended act is attached as Exhibit 2.

The purpose of this legislation was to provide a municipal corporate arrangement to furnish certain needed services, usually in small towns and rural areas, including, but not limited to, the furnishing of water, sewerage disposal, fire protection, police protection, natural gas, etc. which services were not otherwise provided. The district when formed was given an exclusive franchise to provide one or more of the foregoing services.

Section 6-2602 T. C. A. provides that a petition for the incorporation of a utility district may be submitted to the county judge or the county court of any county in which the proposed district is situated; the petition should be signed by not less than twenty-five (25) owners of real property, residing within the boundaries of the district, and said petition should include a statement of the necessity for the service or services, the proposed corporate name and boundaries, an estimate of the cost of acquisition or construction of the facilities, and the nomination of three residents for appointment as commissioners.

It was under this provision in the County Court of Hawkins County, Tennessee, on December 16, 1957, that the order was entered for the creation of The Natural Gas Utility District of Hawkins County, Tennessee, by the Honorable John K. Williams, Chairman of the County Court, he having been elected a member of the court by the public residing in the county.

A copy of the petition and the order are attached, as Exhibits 3 and 4, after the filing of the petition and the holding of the hearing on December 16, 1957, after due notice, the Hawkins County judge determined (a) that the public convenience and necessity required the creation of the District, and (b) that the creation of the

District was economically sound and desirable. Thereafter, he appointed the original commissioners.

(B) The Commissioners, Their Terms
and Compensation

The three original commissioners were appointed by the Chairman of the County Court of Hawkins County, an elected public official. They were:

George O. Baker
Robert S. Lane
Lance W. Rogan

Mr. Baker was the Director of the Technical Trade School for the International Printing Pressmen & Assistant's Union at Pressmen's Home. Mr. Lane is a banker, Mr. Rogan is an automobile dealer.

Mr. Baker later resigned as Commissioner, and by vote of the two remaining commissioners, was replaced by Mr. Howard Sullivan (then Director of the Technical Trade School for I.P.P. & A. U. of N. A.).

Mr. Sullivan was moved to Washington, D. C. He then resigned, and was, by vote of the remaining commissioners, replaced by Bryon D. Rogers, the owner of a hardware store at Church Hill.

The present commissioners are:

Lance W. Rogan Chairman
Robert S. Lane, Secy-Treas.
Bryon D. Rogers

None of these men derives any direct financial gain from the affairs of the District. They serve at a personal loss, and from a sense of civic responsibility, their only compensation being \$25 per day subject to an annual maximum of \$300—they are also reimbursed for their expenses.

Further, Section 6-2614 T.C.A. provides that the remaining Commissioners fill any vacancies but in the event the remaining Commissioners cannot agree on a

successor, the County Judge (an elected official) will appoint same.

Among others served, The Natural Gas Utility District of Hawkins County, Tennessee provides natural gas to heat the County Court House, to heat the Hawkins County Memorial Hospital, to heat homes within a Federal Low Rent Housing Project, to heat the National Guard Armory, located in the eastern end of the County, and has entered into an informal contract with Holston Army Ammunition Plant to provide gas for the boilers used at that installation.

(C) Powers and Attributes of District

Of special significance is the following which is a direct quotation from the statute 6-2687 T.C.A.:

"District as Municipality—Powers. From and after the date of the making and filing of such order of incorporation, the district so incorporated shall be a 'municipality' or public corporation in perpetuity under its corporate name and the same shall in that name be a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes. Charges for services authorized herein, shall not be construed as taxes. The powers of each district shall be vested in and exercised by a majority of the members of the board of commissioners of the district. So long as the district continues to furnish any of the services which it is herein authorized to furnish, it shall be the sole public corporation empowered to furnish such services in the district and no other person, firm, or corporation shall furnish or attempt to furnish any of the said services in the area embraced by the district, unless and until it shall have been established that the public convenience and necessity requires other or additional services." (Emphasis added.)

Further, Section 6-2608 T.C.A. gives to a district the power to operate utilities and "to carry out such purposes it shall have the power and authority to acquire,

construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, with-in or without the district, and to purchase from, and furnish, deliver and sell to any municipality, the state, any public institution and the public, generally, any of the services authorized by this chapter."

Further, Section 6-2610 T.C.A. outlines various other powers of a utility district, including, but not limited to:

- (a) The power to sue and be sued;
- (b) The power to acquire by various methods, hold and dispose of real and personal property;
- (c) The power to make and enter into contracts, conveyances, etc.;
- (d) The power to incur debts;
- (e) The power to borrow money;
- (f) The power to fix, maintain, collect and revise rates and charges;
- (h) The power to pledge all or part of its revenues;
- (i) And various other powers, including specifically the right of eminent domain, with same even extending to other public agencies. Respondent's regular station sites were only obtained after threat of eminent domain proceedings.

Section 6-2613 T.C.A. specifically exempts a district from state regulation, either by the Railroad & Public Utilities Commission or any other board or commission of like character. It should be pointed out that private utilities are specifically subject to such regulation.

Section 6-2615 T.C.A. provides as follows:

"The secretary shall keep a record of all proceedings of the commission which shall be available for inspection as *other public records* and shall be custodian of all official records of the district." (Emphasis added.)

The terms of the board of commissioners and their powers as commissioners are set forth, including the power to subpoena witnesses and to administer oaths. They are much like a board of mayor and alderman of a town, a legislative body.

Section 6-2617 T.C.A. requires the publication of the annual financial statement of the district in a newspaper of general circulation, published in the county in which the district is situated, showing the financial condition of the district at the end of the year and the earnings of the district during the year just ended and the rates then being charged. A procedure for protesting rates is established in 6-2618 T.C.A.

Section 6-2619 T.C.A. authorizes the issuance of revenue bonds. The bonds will be issued for periods not exceeding forty years, at rates of interest not exceeding 6% per annum, payable semiannually; said bonds will be fully negotiable.

Section 6-2624 T.C.A. provides that no bondholders shall have the right to compel the levy of any tax to pay the bonds or the interest thereon and that the same are payable solely from revenue.

Section 6-2626 T.C.A. provides that "So long as a district shall own any system, the property and revenue of such system shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to this chapter and the income therefrom shall be exempt from all state, county, and municipal taxation . . ."

In addition to the property and revenue of a utility district being exempt from state, county and municipal taxation, and the bonds issued and the income therefrom so exempt, utility districts on their purchases pay no state sales tax and obtain exemption certificates, as do other municipalities and political subdivisions of the state; and they may arrange to pay no state gasoline tax on the same basis. And "governmental service" vehicle license tags are obtained and used by respondent on its vehicles.

Further, the interest income on their bonds to the bondholder is free from federal income tax.

There is no provision whatever in the Utility District Act, which permits any distribution of profits to customers or subscribers. There are no stockholders to receive dividends. Since the District is a "municipality", as defined by the statute, there could be no "profits" as such from its operation, nor could there ever be any dis-

tribution of earnings" or of "surplus" funds. Under section 6-2625, the rates to be charged shall be such as shall reasonably pay operational expenses, and to pay bonds and interest. If and when the District should ever be able to retire its bonded indebtedness, the District's customers could then expect a reduction in rates.

Attached are the trust agreements dated May 9, 1962, Exhibit 5, between the District and the Birmingham Bank, covering the outstanding bonds. The District is repeatedly referred to therein as "the Municipality." As long as bonds are outstanding, the flow of and use of its revenue is completely controlled by this agreement.

(D) Other Applicable Statutes

No provision is made for unemployment compensation covering the employees of a district since it is a political subdivision of the state.

And furthermore, the only reason the employees are covered by social security is because under Federal statute, 42 USCA 418, and Tennessee statute 8-3811 T.C.A., provision is made for a voluntary agreement between the Secretary of Health, Education and Welfare and certain governmental entities to cover its employees. This voluntary coverage is available for employees of a state or political subdivision thereof. The respondent by resolution dated January 19, 1965, extended such coverage to its employees.

Certain other Tennessee statutes should be referred to because they characterize a utility district as a municipality and/or an instrumentality of the State of Tennessee.

In that regard, Section 6-318 T.C.A. entitled "Municipal Property and Services," reads in part as follows:

"upon adoption of an annexation ordinance or upon referendum approval of an annexation resolution as hereinabove provided, an annexing municipality and any affected instrumentality of the state of Tennessee, such as, but not limited to, a utility district, sanitary district, school district, or other public

service district, shall attempt to reach agreement in writing for allocation and conveyance to the annexing municipality of any or all public functions, rights, duties, property, assets and liabilities of such state instrumentality that justice and reason may require in the circumstances . . ."

Further, Section 6-604 T.C.A. in the Municipal Corporations section provides that a county, utility district, municipality or other agency conducting any utility service may extend the same beyond its boundaries. A utility district is thus characterized and given the same authority as a county, a municipality or other public agency.

Further, Section 9-1202 T.C.A. dealing with revenue bond refinancing, subsection (a) provides as follows:

"The term 'municipality' shall mean any county, city, town township, utility, utility district, and sanitary district of this state."

(s) Eugene Greener, Jr.

Sworn to and subscribed before me, this February 26, 1968.

My commission expires: 4-15-71.

(s) (Not Legible)
Notary Public

EXHIBIT 1

Form NLRB-1479
(11-63)

United States of America
Before the
NATIONAL LABOR RELATIONS BOARD
Case No. 26-RC-2972

The West Tennessee Public Utility District of
Weakley, Carroll and Benton Counties, Ten-
nessee _____ Employer ¹
The International Union of District 50, United
Mine Workers of America _____ Petitioner ²

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Utility District is not engaged in commerce within the meaning of the Act and it will not effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claim(s) to represent certain employees of the Employer.

¹ The name of the Utility District appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act, for the following reasons:

At the hearing, the Utility District renewed its pre-hearing motion to dismiss the petition on the ground that it is not an employer within the meaning of Section 2(2) of the Act. The record shows that the Utility District, which is engaged in distribution of natural gas to residents of the three Counties, was created in July 1953, under the provisions of the State of Tennessee's "Utility District Act of 1937," and subsequent amendments. The statute proscribed the procedure of incorporation, which calls for the filing of a petition in the County Court by residents of the proposed District, and directs the County Judge to determine that the "public convenience and necessity requires the creation of the district" and that the "creation of the district is economically sound and desirable." The record reveals that after a required public hearing the Weakley County Judge created the Utility District, as called for by the enabling legislation, and appointed the three original Commissioners which is the governing body of the Utility District. The enabling statute states that from the time of incorporation the district incorporated "shall be a municipality or public corporation in perpetuity . . . and a . . . body politic." The statute, inter alia, gives a Utility District power to "conduct, operate and maintain a system or systems for the furnishing of water, sewer, sewage disposal, natural gas, artificial gas, police . . . fire protection," and specifies that the Utility District "shall be the sole power" to furnish any of the services which it is authorized to furnish. The record reveals that the monies for the construction of the Utility District's natural gas system were raised, as authorized by the statute, by the sale of bonds. The interest paid to the bondholders are exempt from Federal and State Income Taxes. The Utility District has no stockholders and the Commissioners receive no salary, but are compensated for their expenses. The Commissioners have the power to subpoena witnesses and administer oaths. Among other powers, the Utility Dis-

trict can acquire, hold and dispose of both real and personal property and can exercise the rights of eminent domain to acquire real property. The enabling legislation exempts all property and revenue owned by the Utility District from state, county and municipal taxation. The Utility District pays no sales or gasoline tax on its purchases, having exemption certificates from the State of Tennessee. On the basis of the foregoing facts, it is clear that all of the powers, duties and authority of the Utility District derives from the State of Tennessee, and that the Utility Authority is a political subdivision of the State of Tennessee and is not an employer within the meaning of Section 2(2) of the Act. New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 127 NLRB 1322. Accordingly, the Utility District's motion to dismiss the petition is granted.

ORDER

It Is Hereby Ordered that the petition filed herein be, and it hereby is, dismissed.

(s) John J. A. Reynolds, Jr.
Regional Director, Region 26

(Seal)

Dated September 1, 1967
at Memphis Tennessee

EXHIBIT 3

Filed December 4, 1957

(s) Dennis Payne, Clerk

To The Honorable John K. Williams, Chairman Of The County Court Of Hawkins County, Tennessee.

The ex parte petition for the creation of a utility district, as provided by Sections 6-2601-6-2636 of the Tennessee Code Annotated.

Your Petitioners, Whose Names Are Subscribed Below, Respectfully Show To The Court:

1.

Each of the petitioners are legal residents, within the boundaries of the proposed utility district as hereinafter described, and the owners of real estate therein.

2.

The utility district proposed to be created hereby intends to serve its area with natural gas, which is not now available therein. Said district will serve as a distributor and retailer of natural gas.

3.

The proposed corporate name of said district is "The Natural Gas Utility District of Hawkins County, Tenn.", and its boundaries shall be the entire area of Hawkins County, Tenn. (excluding, however, the areas encompassed by the territorial boundaries of three existing utility districts within said County, namely, (a) First Utility District of Hawkins County, Tenn., (b) Bulls Gap Utility District of Hawkins County, Tenn., & (c) Surgoinsville Utility District of Hawkins County, Tenn.) and (d)

4.

The estimated cost of the construction of the facilities of said district is the sum of one million dollars (\$1,000,000.00).

5.

The following named persons, residents of said District, are hereby nominated as commissioners of the District:

Robert S. Lane	—Term of two years
Lance Rogan	—Term of three years
George O. Baker	—Term of four years

Wherefore, Premises Considered, Petitioners Pray:

1. That said Utility District be created, after a public hearing, as provided by law.
2. That the aforesaid persons be named as commissioners of the District.
3. And for general relief.

(Name)	(Address)
(s) C. C. Johnson, M.D.	Rogersville, Teen.
(s) W. F. Phipps	Rogersville, Teen.
(s) Owen K. Alley	Rogersville, Teen.
(s) Jack A. Cooter	Rogersville, Teen.
(s) Reid Terry	Rogersville, Teen.
(s) Fred Harrison	Rogersville, Teen.
(s) E. M. Henderson, M.D.	Rogersville, Teen.
(s) (Not legible)	Rogersville, Teen.
(s) George L. Googe	Pressmen's Home
(s) Thos. E. Dunwody	Pressmen's Home
(s) Howard Sullivan	Pressmen's Home
(s) Lon R. Beale	110 Main St. Rogersville, Tenn.
(s) J. S. Lyons, M.D.	Rogersville, Tenn.
(s) James O. Phillips, Jr.	626 E. Main Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) W. H. Lyons, M.D.	Rogersville, Tenn.
(s) Hiram D. Heck	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.

(Name)	(Address)
(s) (Not legible)	Rogersville, Tenn.
(s) John E. Beal	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) Joe A. Chambers	Rogersville, Tenn.
(s) Robert L. Ring	Rogersville, Tenn.
(s) M. B. Jones, Sr.	Rogersville, Tenn.
(s) Tom H. Rogan	Rogersville, Tenn.
(s) Dan Anderson	Rogersville, Tenn.
(s) Arthur Lyons	Rogersville, Tenn.
(s) Robert C. Armstrong, Jr.	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) John Dalton	Rogersville, Tenn.
(s) Paul Greene	Rogersville, Tenn.
(s) Kenneth Honder	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) (Not legible)	Rogersville, Tenn.
(s) Ernest Henderson	Rogersville, Tenn.
(s) J. H. McDonald	Rogersville, Tenn.

State of Tennessee
Hawkins County

I, Dan Miner, hereby make oath that I circulated the foregoing petition, and that I witnessed the signature of each petitioner thereto; that each signature is the signature of the person it purports to be, and that to the best of my knowledge each petitioner was, at the time of signing, an owner of real estate within and a resident of the proposed district.

(s) Dan Miner

Sworn to and subscribed before me this 3rd day of December, 1957.

My commission expires October 15, 1960.

(s) Elizabeth A. Reese
Notary Public

(Seal)

EXHIBIT 4

In Re: The Natural Gas Utility District
of Hawkins County, Tennessee

Before John K. Williams
Chairman of the County Court of
Hawkins County, Tennessee

ORDER

This matter came on to be heard before the Honorable John K. Williams, Chairman of the County Court of Hawkins County, Tennessee, on this 16th day of December, 1957, pursuant to a petition duly filed with the undersigned by more than twenty-five (25) owners of real property residing within the boundaries of the proposed Utility District, for the creation of a Utility District in accordance with the provisions of Sections 6-2601-6-2636 of the Tennessee Code as amended.

After hearing the evidence, and upon due consideration thereof, it satisfactorily appears that the public convenience and necessity requires the creation of the proposed Utility District, and that the creation of the District is economically sound and desirable. It is accordingly ordered and adjudged that The Natural Gas Utility District of Hawkins County, Tennessee, is hereby created.

The boundaries of said Utility District shall be:

The entire area of Hawkins County, Tennessee, (excluding, however, the areas encompassed by the territorial boundaries of three existing Utility Districts within the same county, namely: First Utility District of Hawkins County, Tennessee; Bulls Gap Utility District of Hawkins County, Tennessee; and Surgoinsville Utility District of Hawkins County, Tennessee.

The following persons are hereby appointed as Commissioners of said Utility District for the terms set opposite their respective names:

Robert S. Lane	2 years
Lance Rogan	3 years
George O. Baker	4 years

The costs of this proceeding, including the cost of publication of notice of this hearing, are hereby taxed against the several petitioners.

The Clerk of the County Court shall enter this order upon his records.

(s) John K. Williams
Chairman of the County Court of
Hawkins County, Tennessee

EXHIBIT 5

TRUST AGREEMENT

between

The Natural Gas Utility District
of
Hawkins County, Tennessee

and

Birmingham Trust National Bank
Birmingham, Alabama

\$1,975,000 Natural Gas System Revenue Bonds

This Trust Agreement, dated May 9, 1962, between The Natural Gas Utility District of Hawkins County, Tennessee, (hereinafter sometimes referred to as "the Municipality"), party of the first part, and Birmingham Trust National Bank, a banking association duly organized and existing under and by virtue of the laws of Alabama and having its principal office in Birmingham, Alabama, (hereinafter sometimes referred to as "the Trustee"), party of the second part,

WITNESSETH:

Whereas, the Municipality pursuant to a resolution adopted on the 9th day of May, 1962, entitled: "Resolution Authorizing the Issuance of \$1,975,000 Natural Gas System Revenue Bonds of the Natural Gas Utility District of Hawkins County, Tennessee; Prescribing the Form and Other Details of Said Bonds; Providing for the Collection and Disposition of the Revenues to Be Derived From Its Natural Gas System; Making Other Provisions With Respect to the Operation of Said System and the Issuance of Said Bonds; and Providing for the Security and Payment of Said Bonds and the Appointment of a Trustee Therefor," a true and complete copy of which is attached hereto and made a part hereof as fully and to the same extent as if incorporated verbatim herein, has authorized the issuance of \$1,975,000 Natural Gas System Revenue Bonds (hereinafter sometimes referred to as "the bonds") for the purpose of financing the cost of constructing a natural gas system for the Municipality (hereinafter sometimes referred to as "the system"); and

Whereas, the Municipality will sell and deliver the bonds pursuant to the provisions of said resolution; and

Whereas, the resolution provides that upon delivery of the bonds, the accrued interest received upon such delivery and the sum of \$325,875 shall be deposited in the Natural Gas System Principal and Interest Fund established pursuant to Section 8(b) of the resolution and a portion of the principal proceeds of the bonds shall be deposited in the Natural Gas Construction and Contingency Fund established pursuant to Section 15(c) of the resolution; and

Whereas, the Municipality has covenanted that the net revenues derived from the operation of the system will be deposited in the Principal and Interest Fund, the Reserve Fund, the Extension and Replacement Fund, and the Bond Redemption Fund established in the resolution; and

Whereas, the Municipality has, in and by the resolution, further covenanted and agreed that it will execute a trust agreement with the Trustee for the benefit of the

holders from time to time of the bonds, in the form and terms hereof, and the Trustee, by its execution of this trust agreement accepts its appointment as the Trustee in accordance with the terms and provisions of the resolution and this trust agreement;

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth and pursuant to the terms and provisions of the resolution, the Municipality, as party of the first part, and the Trustee, as party of the second part, have agreed and do hereby agree as follows for the equal and proportionate benefit and security of the holders of the bonds and the interest coupons thereto appertaining as follows:

Section 1. The Municipality will make deposits in the Principal and Interest Fund, the Principal and Interest Reserve Fund, the Extension and Replacement Fund and the Bond Redemption Fund with the Trustee, in the manner and amounts and at the times provided in the resolution.

Section 2. The Trustee will maintain such funds on deposit with it and will disburse and apply the money therein only in the manner provided in the resolution. Before making any disbursements or payments from any of the funds maintained with the Trustee, the Trustee shall first receive all certificates, resolution or other documents required for such disbursements or payments by the resolution or this trust agreement.

Section 3. The Trustee will invest and reinvest the money at any time on deposit in the Reserve Fund and the Extension and Replacement Fund only in the manner provided in the resolution and only upon the written request of the Municipality, evidenced by a resolution certified by the Secretary of the Board of Commissioners of the Municipality to have been duly adopted by said Board, or the request of an officer of the Municipality to whom the Board of Commissioners of the Municipality by a resolution certified by such Secretary to have been duly adopted has delegated the power and authority to request the Trustee to make such investments or reinvestments.

Any of such investments or reinvestments shall be liquidated by the Trustee whenever necessary to make any of the payments required or permitted to be made

from either of said funds by the provisions of the resolution without any further authority from the Municipality except this trust agreement.

The Trustee shall not be liable for any loss as a result of such investments or reinvestments made as provided above, and all income and increment from such investments or reinvestments shall be deposited in the Gross Revenue Account as provided in the resolution.

Section 4. The Trustee will maintain the Natural Gas Construction and Contingency Fund and said fund shall be disbursed upon receipt by the Trustee of a certificate signed by two commissioners of the Municipality approving such disbursement in a specified amount, designating the payee of such disbursement and stating that such disbursement is properly payable to said payee for legal, fiscal, engineering or other expenses incurred in connection with the issuance of the bonds, or for services rendered or material or property supplied for the construction of the natural gas system of the Municipality pursuant to a contract between the Municipality and L. F. Wilder Construction Company of Birmingham, Alabama, dated April 9, 1962.

Section 5. The Trustee shall have all of the rights provided for in Section 11 of the resolution upon the happening of the conditions specified therein.

Section 6. Whenever the Municipality determines to purchase any bonds for retirement in accordance with the provisions of the resolution, the Municipality shall furnish to the Trustee, prior to the date fixed for such purchase a copy, certified by the Secretary of the Board of Commissioners of the Municipality to have been duly adopted by the Board of Commissioners of the Municipality, of a resolution authorizing such purchase.

Whenever the Municipality shall call any bonds for redemption, the Municipality shall furnish to the Trustee, prior to the date fixed for such redemption, (a) a copy certified by the Secretary of the Board of Commissioners of the Municipality to have been duly adopted by said Board, of a resolution authorizing such redemption, (b) a copy of the notice of redemption, together with proof satisfactory to the Trustee that such notice has been duly published or given in the manner provided in the

resolution and (c) funds sufficient (together with any other funds then held by the Trustee and available for the purpose) for the payment of the entire amount of principal, premium (if any), and interest required for such redemption.

Section 7. The Trustee has executed this trust agreement and agrees to carry out the terms and provisions hereof on its part, but only upon and subject to the following express terms and conditions:

(a) The Trustee shall not be responsible for any recitals herein or in the bonds or in the resolution or for the validity of this trust agreement or of the bonds, or of the resolution nor for the performance of any of the agreements herein or in the resolution contained on the part of the Municipality.

(b) The Trustee shall not be liable except for the performance of such duties as are specifically set forth in this trust agreement and the resolution, and no implied covenants or obligations shall be read into this trust agreement or the resolution against the Trustee.

(c) The Trustee shall have no responsibility with respect to the issuance of the bonds or with respect to compliance by the Municipality with the provisions of the resolution or of any other resolution relative to such issuance. The Trustee shall not be accountable for any of the proceeds of the bonds or of the revenues of the system nor for any other funds of the Municipality, except such funds as may be deposited with or under the control of the Trustee, nor for the use of any funds deposited with or under the control of the Trustee and paid out conformably with the resolution and this trust agreement. The Trustee shall not be required to allow interest on any funds at any time deposited hereunder. The Trustee may become the owner of bonds with the same rights which it would have if not Trustee hereunder.

(d) The Trustee shall not be liable for any action taken or omitted to be taken by it in good faith and in the exercise of reasonable care and believed by it to be within the discretion or power conferred upon

it by this trust agreement, nor shall the Trustee be responsible for the consequences of any error of judgment, and the Trustee shall not be answerable except for its own acts, receipts, neglect and default, nor for any loss unless the same shall happen through the negligence or want of good faith of the Trustee.

(e) The Trustee may consult with counsel (who may be of counsel for the Municipality), and any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder or under the resolution in good faith and in accordance with such opinion of counsel.

(f) The Trustee shall be protected in acting upon any notice, resolution, request, consent, certificate, report, opinion, statement, bond or other document believed by it to be genuine and to have been signed, adopted or authorized by the proper party or parties or by a person or persons authorized to act on his or their behalf or to have been prepared and furnished pursuant to any of the provisions of this trust agreement or of the resolution.

(g) The Trustee may conclusively rely as to the truth of the statements and the correctness of opinions expressed therein, in the absence of bad faith, upon any resolutions, certificates, reports, opinions, statements or other documents conforming to the requirements of this trust agreement or of the resolution; but, in the case of any such document which by any provision of this trust agreement or of the resolution is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it conforms to the requirements of this trust agreement and of the resolution.

(h) Except as otherwise provided in this trust agreement or in the resolution, any requisition, request, notice, report, statement or other document filed with the Trustee on behalf of the Municipality shall be deemed to have been signed by the proper party or parties if signed by the President or Secretary of the Board of Commissioners of the Municipality.

pality. The Trustee may accept a certificate signed by said Secretary as conclusive evidence that any resolution has been duly adopted by the Board of Commissioners of the Municipality. Except as otherwise expressly provided in this trust agreement or in the resolution, a certificate of said President or Secretary as to the existence or non-existence of any fact pertinent to the right of the Trustee to take or refrain from taking any action under this trust agreement or under the resolution, may be accepted by the Trustee as conclusive evidence of the facts therein stated and shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(i) None of the provisions contained in this trust agreement or in the resolution shall require the Trustee to advance or use its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights or powers, if there is reasonable ground to believe that the repayment of such funds or protection from such liability is not reasonably assured. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this trust agreement or by the resolution at the request or direction of any of the bondholders pursuant to this trust agreement or of the resolution, unless such bondholders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred by it by compliance with such request or direction.

(j) The Trustee shall secure all money on deposit with the Trustee at any time in the manner provided in the resolution.

(k) The Trustee shall have a lien hereunder upon all money on deposit in the Revenue Account described in the resolution for reasonable compensation, expenses, advances and counsel fees incurred in and about the exercise and performance of its powers and duties hereunder, and the cost and expense of defending against any liability in the premises of

any character whatsoever. The compensation of the Trustee shall not be limited to or by any provision of law in regard to compensation of a Trustee of an express trust.

(1) The Trustee may resign and be discharged from the trusts created by this trust agreement and by the resolution by giving written notice thereof to the Municipality. Such resignation shall become effective on the day specified in such notice or upon the appointment of a successor Trustee and such successor's acceptance of such appointment, whichever is earlier.

The Trustee may be removed upon application by the holders of a majority in principal amount of the bonds then outstanding by an instrument or concurrent instruments in writing signed or executed by such bondholders or by their authorized agents in the manner provided in Section 8 of this trust agreement and filed with the Municipality and the Trustee. The Trustee may also be removed by the Municipality for cause, by filing with the Trustee a copy of a resolution providing for such removal certified by the Secretary of the Board of Commissioners of the Municipality to have been duly adopted by said Board.

In case the Trustee or any successor thereof shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, a successor Trustee may be appointed by the Municipality by filing with the retiring Trustee and with such successor Trustee a copy of a resolution appointing such successor, certified by the Secretary of the Board of Commissioners of the Municipality to have been duly adopted by said Board. Any successor Trustee shall be a bank or trust company authorized to perform all of the duties required by this trust agreement and the resolution.

Every successor Trustee appointed hereunder shall

execute, acknowledge and deliver to its predecessor and also to the Municipality an instrument in writing accepting such appointment hereunder, whereupon such successor Trustee, without any further act, deed or conveyance shall become fully vested with all of the estates, rights, powers, duties and obligations of its predecessor and every predecessor Trustee shall deliver all money and securities, together with a record of the amount and the numbers of the outstanding bonds, to its successor, provided, however, that before such delivery is required or made, all fees, advances and expenses of the retiring Trustee shall be paid in full.

Any corporation into which the Trustee or any successor to it may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, shall be the successor Trustee under this trust agreement without the execution or filing of any paper on the part of either of the parties hereto.

Section 8. Any request, consent or other instrument required by this trust agreement or the resolution to be signed and executed by bondholders may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such bondholders in person or by agent or agents duly appointed in writing. Proof of the execution of any such request or other instrument or of a writing appointing any such agent, or of the holding by any person of bonds transferable by delivery, shall be sufficient for any purpose of this trust agreement and the resolution and shall be conclusive in favor of the Trustee and of the Municipality if made in the manner provided in this section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the

person signing such request, consent or other instrument acknowledged to him the execution thereof.

The amount of bonds transferable by delivery held by any person executing any such request, consent or other instrument as a bondholder, and the distinguishing numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any responsible trust company, bank, banker or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depositary, or exhibited to it the bonds therein described; or such facts may be proved by the certificate or affidavit of the person executing such request or other instrument as a bondholder, if such certificate or affidavit shall be deemed by the Trustee to be satisfactory. The Trustee and the Municipality may conclusively assume that such ownership continues until written notice to the contrary is served upon the Trustee.

The ownership of bonds registered as to principal shall be proved by the register of such bonds.

Any request, consent or vote of the holder of any bond shall bind every future holder of the same bond and the holder of every bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Municipality in pursuance of such request, consent or vote.

Section 9. All terms used herein which are defined in the resolution shall be deemed to have the respective meanings ascribed thereto in the resolution.

Section 10. The Municipality covenants that proper books and records will be kept, in which full, true and correct entries will be made of all income, expenses and transactions of and in relation to the system in the manner provided in the resolution, and that it will punctually file with the Trustee all monthly, annual or other reports, budgets or other documents required by the resolution or this trust agreement to be filed with the Trustee, at the times and in the manner provided in the resolution and this trust agreement.

Section 11. Nothing in this trust agreement expressed or implied is intended or shall be construed to confer

upon any person, firm or corporation, other than the parties hereto and the holders of the bonds and the coupons appertaining thereto, any right, remedy or claim, legal or equitable, under or by reason of this trust agreement or any covenant, condition or stipulation hereof.

This trust agreement is made for the benefit of the holders of the bonds from time to time and the provisions of this trust agreement shall constitute a contract between the Municipality and the Trustee and the bondholders as fully and to the same extent as if incorporated verbatim in the resolution and may be fully enforced by any of the holders of the bonds, or of the coupons appertaining thereto.

Section 12. Upon the final payment and retirement of all the bonds and the interest thereon, any balance of money remaining in any of said funds on deposit with the Trustee or under its control shall be remitted to the Municipality.

In Witness Whereof, The Natural Gas Utility District of Hawkins County, Tennessee, has caused this trust agreement to be signed in its name by the President of the Board of Commissioners of said District, and its corporate seal to be hereunto affixed and attested by the Secretary of said Board and Birmingham Trust National Bank has caused this trust agreement to be signed in its corporate name by its corporate trust officers and its corporate seal to be hereunto affixed and attested by its Assistant Cashier, all as of the day and year first above written.

The Natural Gas Utility District of
Hawkins County, Tennessee

(Seal) By (s) G. O. Baker,
Attest: President, Board of Commissioners

(s) Robert S. Lane,
Secretary, Board of Commissioners
Birmingham Trust National Bank

(Seal) By (s) H. R. XXX XXXXX
Attest: Corporate Trust Officer

(s) (Not Legible)
Assistant Cashier

AFFIDAVIT OF JAMES O. PHILLIPS, JR.

State of Tennessee)
County of Hawkins)

Comes James O. Phillips, Jr., and makes oath in due form of law as follows:

Affiant is 57 years of age, a resident of Rogersville, Tennessee, and has lived in said town for all of his life. Affiant has been engaged in general law practice at the same location since the year 1932. He is presently a member of the legal firm of Phillips & Hale, and has held some public offices within said County, including that of Mayor of Rogersville, County Attorney for Hawkins County, Chairman of the City School Board. Affiant has also been connected with one of the banks located in Hawkins County, as Chairman and Member of the Board of Directors, and by reason of his experience in the above fields is somewhat familiar with the general conditions which has prevailed in Hawkins County, Tennessee for the past few years.

Hawkins County contains an area of 480 square miles, and on and prior to December 16, 1957, it was largely a rural area, made up of a number of small farms. The population according to the 1960 census was 30,468.

In the year 1957, and for some time prior thereto, the price structure for agricultural products was such that a reasonable living could not be made upon most of the small farms within Hawkins County. Burley tobacco allotments were steadily being decreased, and this deprived our farmers of a considerable portion of their one good "cash crop." Only fully mechanized, large farms could be operated at a fair profit which would support an average family of four. The result of this situation was that, at this time, the youth of the County were leaving the county just as soon as they finished high school or college, as there was no hope of employment for them at home. In order to prevent a sharp decline in population, and in order to maintain sufficient tax revenues to keep local governmental services (especially

education) in line with prevailing standards, it became apparent that the County must obtain some industrial plants.

When industries were contacted, it was found that in most instances new factories will not be located in areas where natural gas is unavailable. An effort was made to have this commodity distributed within the County by a retailer operating in an adjoining county. They could or would not do so, due to financial problems. None of the municipalities then in the county could be interested in undertaking this function. So it was that, under the direction of the Hawkins County Chamber of Commerce, and with some assistance from the communities of Rogersville, Surgoinsville and Pressmen's Home, The Natural Gas Utility District of Hawkins County, Tennessee was organized, under the provisions of The Utility District Act of 1937. It should be added that we learned that the Town of Oak Ridge, Tennessee had obtained natural gas in this same manner.

A sort time prior to December 16, 1957, affiant, together with Mr. Robert S. Lane of Rogersville, Tennessee, contacted Mr. Thomas E. Dunwody, who was then President of International Printing Pressmen & Assistant Union of North America, located at Pressmen's Home, Tennessee. Mr. Dunwody (together with Mr. George L. Googe, Secretary-Treasurer of I.P.P. & A. U. of N. A.) were most interested in obtaining natural gas supply for heating purposes for the Pressmen's Home community. It was agreed that a utility district would be organized for the purpose of providing natural gas to Hawkins County including Pressmen's Home, with the hope and expectation that the necessary financing could be obtained through the sale of revenue bonds. Mr. Dunwody suggested Mr. George O. Baker (then President of the Technical Trade School at Pressmen's Home) to serve as a utility district commissioner for that area. Mr. Robert S. Lane agreed to serve from the Rogersville area and Mr. Lance W. Rogan, an automobile dealer was likewise contacted and he agreed to serve as the third commissioner. The organizing petition was actually cir-

culated by Mr. Dan Miner, who had formerly been employed with one or more natural gas systems, and who was very much interested in natural gas being brought into Hawkins County.

Although the Utility District was organized in 1957, it was not until 1962 that the District was able to obtain the necessary financing. In the interim, we tried every possible source including, various U. S. Governmental agencies. In 1962, the firm of Hugo Marx & Company of Birmingham, Alabama, contracted to buy and re-sell the District's revenue bonds in the total amount of \$1,950,000, and did so buy and re-sell them. With the proceeds, the District did construct a natural gas distribution system, extending from Rogersville, northerly to Pressmen's Home (12 miles), and from Rogersville easterly to a point near the Sullivan County line (26 miles), the latter serving the communities of Surgoinville, Church Hill and Mount Carmel. Rural homes located in reasonably close proximity to the distribution lines are served throughout the County. The District now serves a total of approximately 975 residences, of which at least one-half would be considered as being rural homes.

Since the formation of the Utility District, and its commencing operations, the following industrial plants have been located within the County:

Kingsport Press
Employees 350

Approximate cost \$20,000,000.

Holliston Mills (2)
Employees 510

Approximate cost \$30,000,000.

Alladin Plastics
Employees 90

Approximate cost \$ 2,000,000.

All of these plants are served by our Utility District, and none of them would have been located within the County, had natural gas not been available for them.

(s) James O. Phillips, Jr.

Sworn to and subscribed before me, this February 21, 1968.

(s) Nona Carpenter
Notary Public

My Commission Expires: 8-11-69.

POINTS AND AUTHORITIES ON BEHALF OF THE NATURAL
GAS UTILITY DISTRICT OF HAWKINS COUNTY, TENNESSEE

(Case No. 10-CA-7213)

The Natural Gas Utility District of Hawkins County, Tennessee, submits the following Points and Authorities:

The National Labor Relations Act, as amended, provides Section 2(2) Employer:

"The term 'employer' includes any person acting as an agent of an employer directly or indirectly but shall not include the United States or any wholly owned government corporation, or any Federal Reserve Bank, or any state or political subdivision thereof . . ."

Specifically, it is the contention of the District that it is a political subdivision of the State of Tennessee.

In holding such a utility district constitutional, the State Supreme Court said in *Water Utility District v. McCanless*, 177 Tenn. 128, among other things, as follows, talking about whether or not it may be exempted from taxation as an arm of state government.

"If this incorporated Utility District is property of the State, or of any one of the arms of the State government, then it is well settled that it may be exempted from taxation by the Legislature. *State ex rel. Fort, Commissioner, et al. v. City of Jackson*, 172 Tenn. 119, 110 S. W. 2d 323, and numerous cases there cited. It is said that it does not come within this classification and is not an operation for a State, governmental or public purpose. We think the act quite clearly so classes and characterizes it. We have quoted its declaration of 'Corporate Purpose.' And, in Section 3, it is declared to be a 'Municipality' or public corporation in perpetuity under its corporate name', etc. A municipal corporation is a body established by law, 'chiefly to regulate the local internal affairs of the city, town, or district incorporated', adopting defining words from *State v. Knoxville*, 115 Tenn. 175, 90 S. W. 289, 298, and italicizing 'dis-

trict." And it was held in *Redistricting Cases*, 111 Tenn. 234, 80 S. W. 750, that municipal corporations are 'arms of government', are 'means or instrumentalities of the State government', etc. It is elementary that the Legislature may call such bodies what it pleases, and may give and take away as it chooses their powers and privileges. Here it has chosen to make provision for the creation and operation, in the manifest interest of the public, in these days of necessity for water, light, fire and sewer protection, of a somewhat new and quite limited in scope corporate instrumentality. We find no restriction upon legislative authority as to the size, powers or field of operations, in the creation of one of its arms or instrumentalities. We have various illustrations of analogous agencies which this Court has recognized the power of the legislation to create, which necessarily had exemption from taxation. For instance, discussing the organization of a drainage district, in his opinion in *Pritchard v. Johnson-Toby-Construction Co.*, 155 Tenn. 571 at page 576, 296 S. W. 17, at page 19, Mr. Justice Swiggart said:

'It is our opinion that the board of directors of the drainage district, appointed under the authority of the statute, and vested with the general control and management of the business affairs of the district, with power to make contracts for improvements, etc., must be considered as a quasis public corporation, charged with the duty of executing a governmental purpose as a governmental agency. *Miller v. Washington County*, 143 Tenn. 488, 226 S. W. 199; *Board of Park Commissioners v. Nashville*, 134 Tenn. 612, 635, 639, 185 S. W. 694.'

"The cases he cites are in point, one a road district and the other a park. And see *Knoxville Housing Authority v. Knoxville*, 174 Tenn. 76, 123 S. W. 2d 1085; *University of Tennessee v. People's Bank, et al.*, 157 Tenn. 87, 6 S. W. 2d 328."

It has been repeatedly held that municipal corporations are not employers within the meaning of Section 2 (2) of the National Labor Relations Act.

Local 833 Automobile Workers, 116 NLRB 267.
Yellow Coach Lines, Inc., NLRB Case No. 5-RC-2416.

And similarly, even though a municipality is engaged in a proprietary function, Blount Electric System, Case No. 10-RC-3959. Similarly, it has been held in reference to road commissions, Indiana Toll Road Commission, Case No. 13-RC-6021, and New Jersey Turnpike Authority, Case No. 4-RC-2245.

It is necessary at this point to digress long enough to make the point that copies of certain cited decisions substantiating the employer's position herein are no longer available. Specifically, Volume 1, "Labor Relations: of Commerce Clearing House, Inc. Labor Law Reporter, at Par. 1635.10 et seq. lists various decisions with citations including the letters "RC". These, of course, are cases decided by various of the NLRB Regional Offices and include Indiana Toll Road Commission case, Blount Electric System case, New Jersey Turnpike Authority case, and Yellow Coach Lines, Inc. case, just cited above. The undersigned has written to the particular region in an attempt to obtain copies of the decision in question. It has heard from three of the regions, copies of letter from same are attached hereto. It is significant, for instance, in the New Jersey Turnpike Authority case to note that the Regional Director from Philadelphia has indicated that the Board held that "the employer was not an 'employer'" within the meaning of Section 2(2) of the Act, that the case was dismissed, appealed and the appeal was denied (See the letter to Eugene Greener, Jr. from Bernard Samoff, dated August 17, 1967). In reference to this decision, the following is quoted from 33 Labor Relations Reference Manual commencing at page 1528:

"The Regional Director is sustained in his dismissal of representation petition, requesting a unit of toll collectors employed by the New Jersey Turnpike Authority in operation of its toll highways within the State.

The New Jersey Turnpike Authority is not an employer within the meaning of Sec. 2(2) of the Act, in view of the powers, duties and obligations given

to it by the State Legislature in establishing it as part of the State Highway Department.

The Turnpike Authority comprises three members appointed by the Governor for a term of 5 years with the advice and consent of the Senate. It was established on Jan. 31, 1950 by Act of the New Jersey State Legislature for the purpose of constructing, operating and maintaining turnpike projects, with authority to finance such projects by the issuance of bonds and collection of tolls. The Authority may acquire, hold, and dispose of both real and personal property, and exercise the power of eminent domain to acquire real property. Neither the faith and credit of the State, nor its taxing power, is pledged to the payment of bonds issued by the Authority, but the bonds and the property of the Authority are exempt from taxation."

It is also significant, in reference to the Indiana Toll Road Commission case, (See letter from William T. Little to Eugene Greener, Jr., dated August 23, 1967) it is stated that "the petition was dismissed by the 13th Region on July 11, 1958, and the case closed."

Apparently, these decisions were so obvious and routine that it was not necessary to include these as NLRB officially reported decisions.

The undersigned has written to the alleged employer in each case to see if it has retained copy of the decisions, and if the same are available, they will be forwarded subsequently.

The Supreme Court of Tennessee in *City of Alcoa v. International Broth. of Elec. Wkrs.*, 308 S. W. 2d 476, held by virtue of the exemption provided by Section 2(2) of the National Labor Relations Act that it, rather than the NLRB, has jurisdiction over the City of Alcoa, and the following is quoted from that opinion starting on page 478:

"The Congress of the United States is enacting the National Labor Relations Act as amended, has excluded from the operation of this Act municipal corporations such as the City of Alcoa. In the Act the

term 'employer' is defined in Section 2 of the National Labor Relations Act as amended (29 U.S.C.A. § 152(2) :

'The term employer * * * shall not include * * * any state or political subdivision * * *'

And in Section 2(3) of said Act the term 'employee' is defined as follows (29 U.S.C.A. § 152(3) :

'the term employee shall not include * * * any individual employed * * * by any other person who is not an employer as herein defined.'

Since the Act expressly excludes political subdivisions we can hardly see how this doctrine of pre-emption under any stretch of the imagination or discretion of the labor board could here apply.

In *Nutter v. City of Santa Monica*, 74 Cal. App. 2d 292, 168 P. 2d 741, 745, that Court in speaking of the propositions we are considering said:

'* * * Congress did not recognize the existence of the right of collective bargaining in public employment and did not consider it necessary to adopt a national policy which would extend into the field of public employment.'

Two cases have been cited to us in the brief of the appellees wherein the National Labor Relations Board has definitely recognized the absence of a statutory basis to direct an election by the employees where the employer involved is a municipality or other political subdivision of a State. These two cases are: In *Matter of New Jersey Turnpike Authority* Case No. 4-RC-2245, decided April 16, 1954, 33 L.R.R.M. 1528, and *Matter of City of Anchorage, Alaska*, Case No. 19-RC-1300, decided August 17, 1953, 32 L.R.R.M. 1549. It seems in view of this fact if the union and those in the position that it takes herein were to file a petition with the National Labor Relations Board (under the facts of this case) that Board would undoubtedly refuse the action as it did in the two instances above.

The National Labor Relations Act does not apply to the issues involved in the present controversy."

Accordingly, it seems clear the District is exempt as a political subdivision of Tennessee.

Further, a comparison of the powers and duties of the Commissioners in the above cited toll road commission cases, in the Harbor District case, Oxnard Harbor District, 34 NLRB 1285, and the steamship authority case, New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority, 127 NLRB 1322, compels the conclusion that The Natural Gas Utility District of Hawkins County, Tennessee, is a municipality and/or a subdivision of the state government.

It is respectfully submitted that the following partial list of the attributes of The Natural Gas Utility District of Hawkins County, Tennessee, one of nearly 270 such districts in Tennessee, further compels the conclusion that the District is a subdivision of the State of Tennessee. These districts provide various types of services such as water, fire protection, police, sewerage disposal, etc. as well as natural gas. The precedent value of this case as affecting these other districts is of extreme significance:

- (a) Operated by a board of commissioners who serve for only nominal compensation;
- (b) Commissioners appointed by a county judge, a publicly elected official, after approving petition for incorporation based on public convenience and economic necessity, vacancies filled by the remaining commissioners, but if they cannot agree, by the county judge.
- (c) Authority delegated to county judge to so act by act of the legislature;
- (d) Act of legislature provides specifically the district shall be a municipality;
- (e) Act further provides that its property and its bonds shall be exempt from state taxation; interest on bonds, U. S. income tax free;
- (f) Pays no sales tax or gasoline tax; receive motor vehicle license tags available to governmental entities;

- (g) Not regulated by State Public Service Commission as are private utilities;
- (h) May voluntarily contract for social security coverage for its employees as employees of state or political subdivision thereof;
- (i) The State Supreme Court and various statutes specifically state the district to be an instrumentality of the state government;
- (j) District may exercise power of eminent domain and even against other governmental entities.
- (k) Authority to finance construction by bonds which are classified as municipal bonds;
- (l) Commissioners have power to subpoena witnesses and to administer oaths; records of Commission are characterized as "public records" by statute.
- (m) Publication of annual statements in newspapers of general circulation required.
- (n) No stockholders; any surplus must go for rate reduction.

In conclusion, it is submitted that it is quite clear that a utility district, such as The Natural Gas Utility District of Hawkins County, Tennessee, is exempt from the National Labor Relations Act as a political subdivision of the State of Tennessee. This conclusion is compelled. There is no significant attribute to the contrary.

Dated the 26th day of February, 1968.

Respectfully submitted,

(s) Eugene Greener
Buchignani & Greener
104 DuPont Building
Memphis, Tennessee

(s) J. O. Phillips
Citizens Union Bank Bulding
Rogersville, Tennessee

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 10-CA-7213

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE

and

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA, AMERICAN FEDERATION
OF LABOR, LOCAL NO. 102

DECISION AND ORDER

Upon a charge filed by United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federal of Labor, Local No. 102, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 10, issued a complaint dated February 1, 1968, against The Natural Gas Utility District of Hawkins County, Tennessee, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the parties to this proceeding.

The complain alleges, in substance, that on November 6, 1967, the Union was duly certified as the exclusive bargaining representative of the Respondent's employees in an appropriate unit, and that, on or about December 7, 1967, and thereafter, the Respondent refused to recog-

nize or bargain with the Union as such exclusive bargaining representative, although the Union requested the Respondent to do so. On February 6, 1968, Respondent filed its answer to the complaint, in which it admitted in part and denied in part the allegations contained therein, and requested that the complaint be dismissed.

On February 16, 1968, the General Counsel filed with the Board a Motion for Summary Judgment, asserting that there were no issues of fact or law which had not already been litigated before and determined by the Board in a Decision and Direction of Election in a prior representation case,¹ and requesting an appropriate order remedying the violations as alleged in the complaint. Thereafter, on February 19, 1968, the Board issued an Order Transferring Proceeding to the Board and Notice to Show Cause why General Counsel's Motion for Summary Judgment should not be granted. Pursuant thereto, Respondent filed a Response to the Notice to Show Cause with a supporting Memorandum.

Upon the entire record in this case, the Board makes the following:

Ruling on the Motion for Summary Judgment

The record establishes that pursuant to a petition filed by the Union on April 24, 1967, in the abovementioned representation case, a hearing was held before a Hearing Officer of the Board on June 19, 1967, at the close of which the proceeding was transferred to the Board. The Respondent denied that its operations were within the Board's statutory jurisdiction, contending that it was and is an exempt political subdivision of the State of Tennessee. On October 6, 1967, the Board issued its Decision and Direction of Election in which jurisdiction was asserted. On October 19, 1967, the Respondent filed with the Board a motion for further hearing on the jurisdictional issue. The Board, having duly considered the matter, denied the motion on October 24, 1967.

On October 27, 1967, an election was held, in which a majority of the valid ballots were cast for the Union. No objections having been filed, the Union was certified on November 6, 1967.

¹ 167 NLRB No. 100.

By letter dated December 4, 1967, the Union requested the Respondent to bargain collectively. Respondent, by letter dated December 7, 1967, refused to bargain collectively with the Union, and on January 10, 1968, the Union filed the charge upon which these proceedings are predicated.

In its Response to the Notice to Show Cause, Respondent predicates its refusal to bargain solely upon its denial of the Board's jurisdiction. Respondent alleges that it is an "employer" as defined in Section 2(2) of the Act, but rather, a political subdivision of the State of Tennessee. Respondent accordingly contests the validity of the Board-conducted election and the Certification of Representative based thereon.

It is well settled that in the absence of newly discovered or previously unavailable evidence, a respondent in a Section 8(a)(5) proceeding is not entitled to relitigate issues which were or could have been raised in the prior representation proceeding.² As all contentions now made were raised at the earlier hearing in the representation case,³ and were considered and rejected by the Board, and as all factual allegations of the complaint are admitted by Respondent's answers to the complaint or stand admitted by the failure of Respondent to controvert the averments of the General Counsel's motion, there are no matters in is-

² *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146; *N.L.R.B. v. Aerovox Corp.*, — F.2d — (C.A. 4, January 29, 1968); *The Sheffield Corporation*, 163 NLRB No. 34; and *Collins & Aikman Corp.*, 160 NLRB 1750.

³ The Respondent's contention that the decision in *The West Tennessee Public Utility District of Weakley, Carroll and Benton Counties, Tennessee*, 26-RC-2972 (not published in NLRB volumes), is in conflict with and requires reversal of the Board's Decision and Direction of Election in the prior representation case is without merit. That case was decided on September 1, 1967, by the Regional Director for Region 26, who found that the employer therein was a political subdivision of the State of Tennessee and not an "employer" within the meaning of Section 2(2) of the Act. However, no Request for Review by the Board was filed by any party thereto. Accordingly, the Board had no occasion to affirm or reject that holding, and it is not controlling in the instant matter.

sue requiring a hearing before a Trial Examiner. Accordingly, the General Counsel's Motion for Summary Judgment is granted.

On the basis of the record before it, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

Respondent is incorporated under the provisions of the Tennessee Utility District Act and maintains its principal office and place of business at Rogersville, Tennessee, where it is engaged in the sale and distribution of natural gas to residential house, commercial businesses, and industrial firms located in Hawkins County, Tennessee. During the course and conduct of its business operations for the preceding calendar year, the Respondent purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Tennessee. During the same period of time, the Respondent received gross revenue valued in excess of \$250,000. We find that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The representation proceeding

1. The unit

The following employees at the Respondent's Rogersville, Tennessee, operation constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All pipe fitters, but excluding all other employees, office clerical employees, sales men, warehousemen, professional employees, guards and supervisors as defined in the Act.

2. The certification

On October 27, 1967, a majority of the employees of Respondent in said unit, in an election by secret ballot conducted under the supervision of the Regional Director for Region 10, designated the Union as their representative for the purpose of collective bargaining with Respondent, and on November 6, 1967, the Regional Director for Region 10 certified the Union as the collective-bargaining representative of the employees in said unit and the Union continues to be such representative.

B. The request to bargain and the Respondent's refusal

Commencing on or about December 4, 1967, and continuing to date, the Union has been requesting the Respondent to bargain collectively with it with respect to wages, hours, and working conditions of the employees in the appropriate unit. At all times since on or about December 7, 1967, Respondent admittedly has refused to recognize and bargain collectively with the Union as exclusive collective-bargaining representative of all employees in said unit.

Accordingly, we find that the Respondent has, since on or about December 7, 1967, refused to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practice upon Commerce

The acts of the Respondent set forth in Section III, above, occurring in connection with its operations as described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes bur-

dening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act, we shall order that cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

Conclusions of Law

1. The Natural Gas Utility District of Hawkins County, Tennessee, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102, is a labor organization within the meaning of Section 2(5) of the Act.

3. All pipe fitters employed at the Respondent's Rogersville, Tennessee, operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 6, 1967, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about December 7, 1967, and at all times thereafter to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Pursuant to Section 10 (c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby orders that the Respondent, The Natural Gas Utility District of Hawkins County, Tennessee, Rogersville, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment, with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, American Federation of Labor, Local No. 102, as the exclusive bargaining representative of its employees in the following appropriate unit:

All pipe fitters employed at the Respondent's Rogersville, Tennessee, operation, but excluding all other employees, office clerical employees, salesmen, warehousemen, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization, as the exclusive representative of all employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Rogersville, Tennessee, place of business, copies of the attached notice marked "Appendix" * Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notice to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director for Region 10, in writing within 10 days from the date of this Decision and Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D. C.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

Howard Jenkins, Jr., Member
National Labor Relations Board

(Seal)

* In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order," the words "a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

We Will Not refuse to bargain collectively with United Association Of Journeymen And Apprentices Of The Plumbing And Pipe Fitting Industry Of The United States And Canada, American Federation of Labor, Local No. 102, as the exclusive representative of the employees in the bargaining unit described below.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

We Will, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All pipe fitters employed at the Employer's Rogersville, Tennessee, operation, but excluding all other employees, office clearical employees, salesmen, warehousemen, professional employees, guards, and supervisors as defined in the Act.

The Natural Gas Utility District of
Hawkins County, Tennessee
(Employer)

Dated _____ By _____
(Representative) (Title)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE, RESPONDENT

APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 73 Stat. 519), hereinafter called the Act, respectfully applies to this Court for the enforcement of its Order against Respondent, The Natural Gas Utility District of Hawkins County, Tennessee, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as Case No. 10-CA-7213.

In support of this application the Board respectfully shows:

(1) Respondent is engaged in business in the State of Tennessee, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this application by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) On February 13, 1968, the General Counsel filed with the Board a Motion for Summary Judgment, asserting that there were no issues of fact or law which had not already been litigated before and determined by the Board in a Decision and Direction of Election in a prior representation case, and requesting an appropriate order remedying the violations as alleged in the complaint. Thereafter, on February 19, 1968, the Board issued an Order transferring proceeding to the Board and notice to show

cause. Thereafter, on November 26, 1968, the Respondent filed its response to notice to show cause, and on April 12, 1968, the Board issued its Decision and Order. On the same date the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank by registered mail to Respondent's Counsel.

(3) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, and pursuant to Rule 17(b) of the Federal Rules of Appellate Procedure, the Board will certify and file with this Court a certified list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceeding before the Board upon which the said Order was entered which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this application and transcript to be served upon Respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a judgment enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

/s/ Marcel Mallet-Prevost
MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D. C.
this 26th day of November, 1968.

No. 19,186

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE, RESPONDENT

Decided March 17, 1970.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD.

Before WEICK, COMBS and BROOKS,* Circuit Judges.

WEICK, Circuit Judge. This case is before us on the application of National Labor Relations Board for enforcement of its order issued against The Natural Gas Utility District of Hawkins County, Tennessee [the District], which order found that the District violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (29 U.S.C. § 151, et seq), by refusing to bargain with the union certified by the Board as the representative of a unit of the District's pipe fitters. 167 NLRB No. 100 and 170 NLRB No. 156.

The District had refused to bargain with the union on the ground that it (the District) was a political subdivision of the state of Tennessee, therefore it was ex-

* The Honorable Henry L. Brooks, then Chief Judge, United States District Court for the Western District of Kentucky, sitting by designation. Judge Brooks has since become a member of this Court.

empt from the operation of the Act and the Board had no jurisdiction over it.¹

Section 6-2607 of the Tennessee Code, under which the Utility District was organized, provided that a District is a "*municipality or public corporation in perpetuity under its corporate name and the same shall be in that name a body politic and corporate with power of perpetual succession, but without any power to levy or collect taxes.*" [Italics added.]

The Supreme Court of Tennessee construed this statute in *First Suburban Water Util. Dist. v. McCanless*, 177 Tenn. 128, 146 S.W.2d 948 (1941), and held that a District organized under it was a municipal corporation and as such was an arm or instrumentality of the state.

The Board declined to follow the decision of Tennessee's highest court, relying instead on *NLRB v. Randolph Elec. Membership Corp.*, 343 F.2d 60 (4th Cir. 1965), which case involved private non-profit utility corporations organized under the laws of North Carolina, which were formed for the exclusive benefit of their own members, did not have the power of eminent domain, were not subject to substantial control or supervision, and did not exercise any portion of the sovereign power of the state. The Board reasoned:

"The Utility Districts are not created directly by the State. They are formed by petition of property owners upon a County Judge's determination of the feasibility thereof. Thus, the District is no more a direct creation of the State than such privately-owned public service companies as railroads, and

¹ Section 2(2) of the Act provides:

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization." (29 U.S.C. § 152(2))

motor carriers, which also require some form of governmental approval, such as a certificate of convenience and necessity." (App., p. 15 n. 7)

This reasoning is obviously fallacious because privately owned railroads and motor carriers, even though they may have certificates of convenience and necessity, are operated for profit of their owners, whereas the District is owned and operated by the state, and not for the profit of private individuals. The District, unlike railroads and trucking companies, is a public corporation and was not subject to regulation even by the State Public Utilities Commission, and was exempt from all state taxes.

Reliance by the Board on *Randolph* is misplaced. In *Randolph*, unlike our case, there was no holding by the state's highest court that the private utilities were political subdivisions of the state.

In *Randolph* the private utilities were "formed for the exclusive benefit of its own members." Here, the District was formed for the benefit of the inhabitants of the community.

In *Randolph*, the utilities involved did not have the power of eminent domain. Here, the District not only has the power of eminent domain but also can exercise it over other governmental entities.

The Commissioners of the District further have the power to subpoena witnesses and to administer oaths. The District's records are "public records". The District is required to publish its annual statement in a newspaper of general circulation. Income from its bonds is claimed to be exempt from federal income taxes. Social Security benefits for its employees are voluntary instead of mandatory as the District is considered "a political subdivision" under 42 U.S.C. § 418(5).

In our opinion, it was not necessary that the District be created directly by the state in order to constitute a political subdivision. It is sufficient if the District be created in conformity with state law.

It should be noted that the Act does not require agencies of either federal or state governments to be created directly. As a matter of fact, wholly owned government cor-

porations, including the Federal Reserve Bank and even non-profit hospitals, are specifically exempt.²

Under Tennessee law the District is created by petition to the county judge, an elected official, who must find a public convenience and necessity therefor. The county judge appoints the first three commissioners nominated in the petition seeking formation of the District, and fills vacancies in the event the commissioners cannot agree among themselves. In counties having a population of 482,000 or more the commissioners of the Districts are elected at regular general elections. Although the District involved in the present case did not have the requisite number of residents to necessitate the election of its commissioners, this factor indicates that Tennessee considers the functions of a District to be that of a "political subdivision" requiring election of commissioners by the electors when the District encompasses a specified population.

Prior decisions of the Board do not support its holding here. In *Mobile S. S. Ass'n*, 8 NLRB 1297 (1938), the Board held that the State Docks Commission was an exempt political subdivision of the state of Alabama, without discussion of its particular functions or the legal criteria to be applied. In *Oxnard Harbor Dist.*, 34 NLRB 1285 (1941), the Board reviewed extensively the functions of the District and held it was a political subdivision. There was no indication that any particular characteristic was determinative.

In *New Jersey Turnpike Authority*, 2-RC-2245, April 16, 1954, reported unofficially at 33 L.R.R.M. 1528, the Board held that the Turnpike Authority was a political subdivision in view of its powers, duties, and obligations given to it by the state. Three factors were indicated as determinative of the issue, i.e., the administrators were appointed by the Governor; it had the power of eminent domain; and its bonds were tax exempt.

² We disagree with the Board's ruling that because the State does not supervise the District or remove or discipline its commissioners or subordinates, therefore the District is not a political subdivision. We would think that the independence of the District strengthens rather than weakens the proposition that it is a political subdivision.

In *New Bedford, Wood's Hole, Martha's Vineyard, etc. S.S. Authority*, 127 NLRB 1322 (1960), the Authority was established to own and operate a steamship line. The Board was of the opinion that state law, i.e., a determination by the highest court in the state, was controlling on what constitutes a political subdivision. In that case the Board cited *West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940), which held:

"True, as was intimated in the *Erie Railroad* case, the highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted by federal courts as defining state law"

The Court in *Randolph* was of the view that this opinion of the Board in *New Bedford* was based on a misconception of the holding of the Supreme Court in *R.F.C. v. Beaver County*, 328 U.S. 204 (1946), on which the Board relied. *NLRB v. Randolph Elec. Membership Corp.*, *supra*, at 63 n. 6. In our opinion, the Board in *New Bedford* did not err in applying the holdings in *West* and *Beaver County*. There was no conflict with national policy. The Board noted, however, in *New Bedford* that there had been no determination in the state courts as to whether the companies were political subdivisions. The Board then proceeded to review certain specific characteristics of the entities before deciding that they were exempt "political subdivisions."

The Board in *New Bedford* indicated that the following factors were important: 1— The members of the Authority were appointed and removed by the Governor with the consent of the executive council; 2— The Authority's bonds were classified as those of the state; 3— The Authority was performing essential governmental functions; 4— The Authority enjoyed tax exempt status; and 5— The bonds were exempt from taxation.

In our opinion, the state has a right to create its own political subdivisions, and when its creations have been held by the state's highest court to constitute political subdivisions, that ought to be binding on federal administrative agencies.

It was the clear intention of Congress not to make amenable to the National Labor Relations Act employees of either federal or state governments. The effect of the order of the Board in the present case may be to extend its jurisdiction over public employees in nearly 270 Utility Districts in Tennessee, which Districts perform a wide variety of public functions.

The Court in *Randolph* gave great weight to the decision of the Board in that case because of the Board's "familiarity with labor problems and its experience in the administration of the Act." *Id.* at 62. In our judgment, the present case involves more of a question of *municipal law* than a *labor problem*, and the decision of the Supreme Court of Tennessee was of controlling importance on the question whether the District was a political subdivision of the state. In our opinion, it was binding on the Board.

Enforcement is denied.

COMBS, Circuit Judge, dissenting. I would grant enforcement on authority of *N.L.R.B. v. Randolph Electric Membership Corporation*, 343 F.2d 60 (4th Cir. 1965). In that case the court upheld the Board's finding that a non-profit corporation organized under the North Carolina Electric Membership Corporation Act was an "employer" within the meaning of 29 U.S.C. § 152(2). In discussing the scope of review of the Board's determination, the court observed at page 62:

"To the extent that it has taken into account economic realities as well as the statutory purposes, the Board's determination is entitled to great respect. [Citing case.] Our function as a reviewing court is limited to determining whether the Board's conclusion has 'warrant in the record' and a 'reasonable basis in law.'"

I think this is the proper standard. Cf. *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1 (1968).

Federal law, rather than state legislative or judicial pronouncements, is controlling. *N.L.R.B. v. Hearst Pub-*

lications, 322 U.S. 111 (1944); *N.L.R.B. v. Randolph Electric Membership Corporation*, supra. In *Randolph*, at page 64, the court said:

"The fact that North Carolina sees fit to characterize such corporations as 'political subdivisions' and to accord them certain benefits in respect to state taxation and otherwise . . . is not decisive . . . since their relation to the state and their actual methods of operation do not fit the label given them."

The Board concluded that the District here involved is not a "political subdivision" of the state because it was neither created directly by the state nor administered by state appointed or publicly elected officials. The Board noted that the District's operations and services do not differ significantly from those of private utilities whose employees are subject to the Act. The District is completely autonomous in the conduct of its daily affairs; the state exercises no supervision and reserves no power to remove or discipline those responsible for its operations.

Although incorporation of utility districts is authorized by an elaborate statutory scheme, respondent's actual creation resulted from the direct efforts of local residents desirous of obtaining the benefits of natural gas. The District's manager testified unequivocally that it is governed by the board of commissioners which adopts rules and regulations necessary to its operation; that the board sets all service rates; that the manager, and ultimately the board hires and fires employees and determines wages; that neither the employees nor the District is controlled in any way by the county or state government.

It is noted that the furnishing of natural gas is the only service provided by this District and this is not necessarily a governmental function.

UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 19,186

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE, RESPONDENT

[Filed June 5, 1970, Carl W. Reuss, clerk]

ORDER

Before: WEICK, COMBS and BROOKS, Circuit Judges.

This cause came on to be heard on the petition for rehearing en banc, and a majority of the Judges of the Court not having voted in favor of the request for rehearing en banc, the Court finds that said petition for rehearing is not well taken and should be denied. Judges Edwards and Combs voted in favor of rehearing en banc.

It is therefore *ORDERED* that the petition for rehearing be and it is hereby denied. Judge Combs dissents.

Entered by order of the Court.

CARL W. REUSS.

Clerk.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

No. 19,186

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE, RESPONDENT

[Filed Mar. 17, 1970, Carl W. Reuss, Clerk]

ORDER

Before: WEICK, COMBS and BROOKS, Circuit Judges
On petition to enforce an order of the National Labor
Relations Board,

This cause came on to be heard on the transcript of
the record from the National Labor Relations Board,
and was argued by counsel.

On consideration whereof, it is now ordered, adjudged
and decreed by this Court that enforcement of the order
of the National Labor Relations Board is denied.

It is further ordered that Respondent recover from
Petitioner the costs on appeal as itemized below.

Entered by order of the Court.

CARL W. REUSS,
Clerk.

Issued as Mandate: June 23, 1970.

Costs: None.

A true copy.

Attest:

CARL W. REUSS,
Clerk.

SUPREME COURT OF THE UNITED STATES

No. _____, *October Term 1970*

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NATURAL GAS UTILITY DISTRICT OF HAWKINS COUNTY,
TENNESSEEORDER EXTENDING TIME TO FILE PETITION
FOR WRIT OF CERTIORARIUPON CONSIDERATION of the application of counsel for
petitioner(s),IT IS ORDERED that the time for filing a petition for
writ of certiorari in the above-entitled cause be, and the
same is hereby, extended to and including October 1,
1970.

/s/ Potter Stewart

*Associate Justice of the Supreme
Court of the United States*

Dated this 29th day of August, 1970

SUPREME COURT OF THE UNITED STATES

No. 785, *October Term, 1970*

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE NATURAL GAS UTILITY DISTRICT OF HAWKINS
COUNTY, TENNESSEE

ORDER ALLOWING CERTIORARI

[Filed January 11, 1971.]

The petition herein for a writ of certiorari to the
United States Court of Appeals for the Sixth Circuit is
granted.

